



# Heat Networks (Scotland) Act 2021

2021 asp 9

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Explanatory Notes have been produced to assist in the understanding of this Act and are available separately

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# Heat Networks (Scotland) Act 2021

## 2021 asp 9

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# Heat Networks (Scotland) Act 2021

## 2021 asp 9

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 23rd February 2021 and received Royal Assent on 30th March 2021**

An Act of the Scottish Parliament to make provision for regulating the supply of thermal energy by a heat network, and for regulating the construction and operation of a heat network; to make provision about the powers of persons holding a heat networks licence; to make provision about conferring rights in heat network assets where a person ceases operating a heat network; to set targets relating to the supply of thermal energy by heat networks; to make provision about plans relating to increased use of heat networks; and for connected purposes.

### PART 1

#### HEAT NETWORKS LICENCES

##### *Introductory*

#### **1 Meaning of “heat network”**

- (1) In this Act, a “heat network” means—
  - (a) a district heat network, or
  - (b) a communal heating system.
- (2) A district heat network is a network by which thermal energy is distributed from one or more sources of production to more than one building.
- (3) A communal heating system is a system by which thermal energy is distributed from one or more sources of production to one building comprising more than one building unit.
- (4) For the purposes of subsection (2) or (3), where the main purpose of a source of production is to provide thermal energy to a district heat network or (as the case may be) a communal heating system, the source of production forms part of the district heat network or (as the case may be) the communal heating system.
- (5) In this Act, “thermal energy” means heating, cooling or hot water.
- (6) In subsection (3), “building unit” means part of a building that is designed or altered to be used separately.

- (7) The Scottish Ministers may by regulations—
- (a) modify the meaning in this section of “heat network”, “district heat network”, “communal heating system” or “thermal energy”,
  - (b) further define the meaning of any of those terms.

## **2 Requirement for heat networks licence**

- (1) A person must not supply thermal energy by means of a heat network unless the person holds a heat networks licence.
- (2) A person who contravenes subsection (1) commits an offence.
- (3) It is a defence for a person charged with an offence under subsection (2) to show that the person had a reasonable excuse for contravening subsection (1).
- (4) A person who commits an offence under subsection (2) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum,
  - (b) on conviction on indictment, to a fine.
- (5) In this Act, “heat networks licence” means a heat networks licence issued under section 5(5).

## **3 Exemptions from requirement for heat networks licence**

- (1) The Scottish Ministers may by regulations provide that the requirement imposed by section 2(1) does not apply—
- (a) in circumstances specified in the regulations,
  - (b) in relation to heat networks of a description specified in the regulations.
- (2) The Scottish Ministers may direct that the requirement imposed by section 2(1) does not apply—
- (a) to—
    - (i) a person specified by name in the direction,
    - (ii) persons of a description specified in the direction,
  - (b) in relation to heat networks of a description specified in the direction.
- (3) Where the Scottish Ministers issue a direction under subsection (2), they must—
- (a) do so in writing, and
  - (b) publish the direction in such manner as they consider appropriate.
- (4) The Scottish Ministers may grant an exemption by regulations under subsection (1) or by a direction under subsection (2)—
- (a) either—
    - (i) indefinitely, or
    - (ii) for a period specified in the regulations or the direction,
  - (b) either—
    - (i) unconditionally, or
    - (ii) subject to conditions specified in the regulations or the direction.

- (5) The Scottish Ministers may revise or revoke a direction under subsection (2).
- (6) Subsection (3) applies to the revision or revocation of a direction under subsection (2) as it applies to such a direction.
- (7) Regulations under subsection (1), or a direction under subsection (2), may make different provision for different areas.

#### **4 Meaning of “licensing authority”**

In this Act, the “licensing authority” means—

- (a) the Scottish Ministers, or
- (b) such other person as the Scottish Ministers by regulations designate as the licensing authority for the purposes of this Act.

#### *Heat networks licence applications*

#### **5 Heat networks licence applications**

- (1) A person may apply to the licensing authority for a heat networks licence.
- (2) An application under subsection (1) is referred to in this Part as a “heat networks licence application”.
- (3) The licensing authority may grant a heat networks licence application only if it is satisfied that the applicant has the ability to perform the activities that would be authorised by the licence.
- (4) In assessing an applicant’s ability to perform those activities, the licensing authority must have regard to the following matters (in so far as relevant to the performance of those activities)—
  - (a) the applicant’s knowledge, expertise and experience,
  - (b) the applicant’s ability to operate a heat network in a manner that—
    - (i) minimises greenhouse gas emissions (within the meaning of the Climate Change (Scotland) Act 2009) from the heat network,
    - (ii) takes account of the just transition principles (within the meaning of section 35C of that Act), and
    - (iii) contributes to meeting the fuel poverty targets, and
  - (c) such other matter as the Scottish Ministers may by regulations specify.
- (5) As soon as practicable after granting a heat networks licence application, the licensing authority must issue the licence to the applicant.
- (6) Where the licensing authority proposes to refuse a heat networks licence application, it must give the applicant notice—
  - (a) stating that it proposes to refuse the application,
  - (b) stating the reasons why it proposes to refuse the application, and
  - (c) specifying the period (which is to be not less than 28 days from the date on which the notice is given) within which the applicant may make representations about the proposed refusal to the licensing authority.

- (7) As soon as practicable after refusing a heat networks licence application, the licensing authority must notify the applicant of the refusal.

*Conditions of heat networks licence*

**6 Heat networks licence standard conditions**

- (1) The licensing authority must determine conditions relating to the obligations of persons holding heat networks licences.
- (2) In this Part, the conditions determined under subsection (1) are referred to as the “standard conditions”; and references to the standard conditions include those conditions as they may be modified from time to time under section 7(2)(b)(i).
- (3) The standard conditions may in particular—
- (a) include standard conditions that are to apply to—
    - (i) all heat networks licences,
    - (ii) heat networks licences of a particular description,
  - (b) make provision for—
    - (i) the standard conditions (or any of them) not to apply to a particular heat networks licence or heat networks licences of a particular description in such circumstances as may be specified in the standard conditions,
    - (ii) the coming into effect and suspension of the standard conditions (or any of them) in such manner and in such circumstances as may be specified in the standard conditions,
  - (c) include conditions relating to the standards of service to be provided by the person holding a heat networks licence.
- (4) Subject to subsection (5), each heat networks licence has incorporated in it by reference such of the standard conditions as are applicable to it.
- (5) The licensing authority may, in granting a particular heat networks licence application, exclude or modify any of the standard conditions to such extent as it considers appropriate in the circumstances of the case.
- (6) Before making any modification under subsection (5), the licensing authority must give notice of the proposed modification to the applicant of the particular heat networks licence application.
- (7) The notice must—
- (a) state the reasons why the modification is proposed, and
  - (b) specify the period (which is to be not less than 28 days from the date on which the notice is given) within which the applicant may make representations about the proposed modification to the licensing authority.
- (8) In determining the standard conditions under subsection (1), the licensing authority must have regard in particular to—
- (a) the interests of users of thermal energy supplied by means of a heat network,
  - (b) the desirability of furthering or promoting the reduction of greenhouse gas emissions (within the meaning of the Climate Change (Scotland) Act 2009) from the operation of heat networks,

- (c) the desirability of furthering or promoting the use by heat networks of—
  - (i) thermal energy generated from renewable sources,
  - (ii) waste heat or cold.
- (9) In subsection (8)(c)(ii), “waste heat or cold” means heat or cold generated as a result of a use of (or process affecting) land, which would disperse unused if released into air or water.

## **7 Heat networks licence standard conditions: supplementary**

- (1) The licensing authority must publish the standard conditions.
- (2) The licensing authority—
  - (a) must from time to time review the standard conditions, and
  - (b) may—
    - (i) modify the standard conditions, and
    - (ii) make any modification of the conditions of any heat networks licence it considers appropriate as a consequence of any modification of the standard conditions.
- (3) Before making any modification under subsection (2)(b), the licensing authority must—
  - (a) give notice of the proposed modification to every person who holds a heat networks licence whose licence would be affected by the modification, and
  - (b) publish the notice.
- (4) The notice must—
  - (a) state the reasons why the modification is proposed, and
  - (b) specify the period (which is to be not less than 28 days from the date of publication of the notice) within which representations about the proposed modification may be made to the licensing authority.
- (5) Where the licensing authority modifies the standard conditions, it must publish the standard conditions as modified.

## **8 Heat networks licence special conditions**

- (1) In addition to the standard conditions, the licensing authority may include in a heat networks licence any special conditions (whether or not relating to the activities to be authorised by the licence) it considers appropriate.
- (2) The licensing authority may provide in a heat networks licence that a special condition of the licence—
  - (a) has effect or ceases to have effect, or
  - (b) may be modified,at such time, in such manner and in such circumstances as the licensing authority considers appropriate.

*Duration of heat networks licence***9 Period of effect of heat networks licence**

A heat networks licence—

- (a) has effect on the date specified in the licence, and
- (b) continues to have effect unless the licence is—
  - (i) revoked by the licensing authority in accordance with section 11, or
  - (ii) surrendered by the person holding the licence in accordance with the conditions of the licence.

*Modification of heat networks licence***10 Modification of heat networks licence**

- (1) The licensing authority may make any modification of a heat networks licence it considers appropriate.
- (2) The licensing authority may modify a heat networks licence under subsection (1)—
  - (a) following an application by the person holding the licence, or
  - (b) on the licensing authority’s own initiative.
- (3) An application mentioned in subsection (2)(a) is referred to in this Part as a “heat networks licence modification application”.
- (4) Before modifying a heat networks licence under subsection (1), the licensing authority must give notice of the proposed modification to the person holding the licence.
- (5) The notice must—
  - (a) state the reasons why the modification is proposed, and
  - (b) specify the period (which is to be not less than 28 days from the date on which the notice is given) within which the person holding the licence may make representations about the proposed modification to the licensing authority.
- (6) Where the licensing authority modifies a heat networks licence under subsection (1), it must give a copy of the licence as modified to the person holding the licence.
- (7) This section does not apply in relation to the modification of the conditions of a heat networks licence by the licensing authority in consequence of any modification of the standard conditions (see section 7(2)(b)(ii)).

*Revocation of heat networks licence***11 Revocation of heat networks licence**

- (1) The licensing authority may revoke a heat networks licence if it considers that the person holding the licence—
  - (a) no longer has the ability to perform the activities authorised by the licence, or
  - (b) has failed to comply with a condition of the licence.

- (2) For the purposes of subsection (1)(a)—
  - (a) in deciding whether the person holding a heat networks licence no longer has the ability to perform the activities authorised by the licence, the licensing authority is to have regard to the matters mentioned in section 5(4), and
  - (b) it does not matter whether or not the person holding the heat networks licence has failed to comply with a term of the licence.
- (3) The licensing authority may not revoke a heat networks licence under subsection (1) unless it is satisfied that revocation is reasonable having regard to—
  - (a) the terms of the licence,
  - (b) the responsibilities of the person holding the licence to the person's customers, and
  - (c) any other matters the licensing authority considers to be relevant.
- (4) Before revoking a heat networks licence under subsection (1), the licensing authority must give notice of the proposed revocation to the person holding the licence.
- (5) The notice must—
  - (a) state the reasons why the revocation is proposed, and
  - (b) specify the period (which is to be not less than 28 days from the date on which the notice is given) within which the person holding the licence may make representations about the proposed revocation to the licensing authority.
- (6) The licensing authority may revoke a heat networks licence under subsection (1) by giving notice of revocation to the person holding the licence.
- (7) A notice of revocation must specify—
  - (a) the reasons for the revocation, and
  - (b) the date from which the revocation is to have effect.
- (8) The Scottish Ministers may by regulations make further provision about the procedure to be followed in connection with the revocation of a heat networks licence under subsection (1).

## **12 Appeals against revocation of heat networks licence**

- (1) The Scottish Ministers may by regulations make provision for or about appeals against revocation of heat networks licences.
- (2) Regulations under subsection (1) may in particular make provision about—
  - (a) who may appeal,
  - (b) grounds of appeal,
  - (c) the way in which appeals are to be made,
  - (d) the information to be provided when making appeals,
  - (e) the procedure for determining appeals,
  - (f) who may determine appeals,
  - (g) the manner in which appeals are to be conducted,
  - (h) decisions that may be taken on appeal,

- (i) how the determination of appeals is to be notified.
- (3) Regulations under subsection (1) may modify any enactment (including this Act).

*Miscellaneous*

**13 Form and manner etc. of applications under Part 1**

- (1) The Scottish Ministers may determine—
  - (a) the form and manner in which—
    - (i) a heat networks licence application is to be made,
    - (ii) a heat networks licence modification application is to be made,
  - (b) the information (including the information in the form of a document) that must be included in—
    - (i) a heat networks licence application,
    - (ii) a heat networks licence modification application.
- (2) The Scottish Ministers must arrange for any determination under subsection (1) to be published in such manner as they consider appropriate.
- (3) The licensing authority need not consider—
  - (a) a heat networks licence application, or
  - (b) a heat networks licence modification application,that does not comply with a requirement determined under subsection (1).

**14 Regulations about determining applications under Part 1**

- The Scottish Ministers may by regulations make provision about—
- (a) the procedure to be followed by the licensing authority in determining—
    - (i) a heat networks licence application,
    - (ii) a heat networks licence modification application,
  - (b) the notification and publication of—
    - (i) such an application,
    - (ii) determinations made in relation to it.

**15 Guidance for licensing authority**

- (1) The Scottish Ministers may issue guidance to the licensing authority about the exercise of its functions under this Part.
- (2) Guidance under subsection (1) may in particular include guidance relating to—
  - (a) the matters mentioned in section 5(4) (either generally or in a particular case or category of case),
  - (b) the exercise of the licensing authority's functions under this Part as they apply in relation to the supply of thermal energy by means of an existing heat network,
  - (c) decision-making protocols,

- (d) methods of communication with persons applying for, and persons holding, a heat networks licence.
- (3) The licensing authority must have regard to any guidance issued under subsection (1).
- (4) The Scottish Ministers must publish guidance issued under subsection (1) in such manner as they consider appropriate.

## **16 Register of heat networks licences**

- (1) The licensing authority must prepare and maintain a register of heat networks licences.
- (2) The register must contain the following information about each heat networks licence—
  - (a) the name and address of the person to whom the licence was issued,
  - (b) the terms of the licence,
  - (c) the date on which the licence took effect,
  - (d) if the licence is not continuing in effect, the date on which the licence ceased to have effect.
- (3) The register must also contain such other information as the Scottish Ministers may by regulations specify.
- (4) The licensing authority must make arrangements to enable members of the public to inspect the register free of charge.

## **17 Interpretation of Part 1**

- (1) In this Part—
  - “heat networks licence application” has the meaning given in section 5(2),
  - “heat networks licence modification application” has the meaning given in section 10(3),
  - “standard conditions” has the meaning given in section 6(2).
- (2) In this Part, references to the activities authorised (or to be, or would be, authorised) by a heat networks licence means the supply of thermal energy by means of a heat network by the person holding the licence.

## **PART 2**

### HEAT NETWORK CONSENT

#### *Introductory*

## **18 Requirement for heat network consent**

- (1) A heat network must not be constructed or operated except in accordance with a heat network consent relating to—
  - (a) the construction of the heat network, or (as the case may be)
  - (b) the operation of the heat network.
- (2) References in this Act to the construction of a heat network include references to the construction of an extension to an existing heat network.

- (3) In this Act, a “heat network consent” means—
- (a) a consent granted—
    - (i) under section 23(1)(a), or
    - (ii) pursuant to an appeal under section 31(2), or
  - (b) such a consent that is transferred under section 25(1).

## **19 Exemptions from requirement for heat network consent**

- (1) The Scottish Ministers may by regulations provide that the requirement imposed by section 18(1) does not apply—
- (a) in circumstances specified in the regulations,
  - (b) in relation to heat networks of a description specified in the regulations.
- (2) Regulations under subsection (1) may grant an exemption—
- (a) either—
    - (i) indefinitely, or
    - (ii) for a period specified in the regulations,
  - (b) either—
    - (i) unconditionally, or
    - (ii) subject to conditions specified in the regulations.
- (3) Regulations under subsection (1) may make different provision for different areas.

## **20 Designation of local authority as consent authority for the area of the local authority**

- (1) The Scottish Ministers may by regulations designate a local authority as the consent authority for the area of the local authority for the purposes of this Part.
- (2) Where a local authority makes a written request to the Scottish Ministers that it be designated under subsection (1) as the consent authority for its area, the Scottish Ministers must make regulations under subsection (1) so designating the local authority before the expiry of the period of 6 months beginning with the day on which the request was made unless the local authority has withdrawn the request in writing.
- (3) Regulations under subsection (1) may make provision modifying this Part and Part 7 in consequence of the designation made by the regulations.
- (4) Before making regulations under subsection (1), the Scottish Ministers must consult—
- (a) the local authority whom the regulations would (if made) designate as the consent authority for its area, and
  - (b) such other persons as the Scottish Ministers consider appropriate.
- (5) Where regulations under subsection (1) are subject to the affirmative procedure, the references in subsections (2) and (4) to making regulations under subsection (1) are to be read as references to laying a draft of a Scottish statutory instrument containing regulations under subsection (1) before the Scottish Parliament.

**21 Meaning of “appropriate consent authority”**

In this Part, the “appropriate consent authority”, in relation to an application made or a consent granted under this Part in relation to a heat network, means—

- (a) where the heat network is (or is to be) situated in the area of a local authority that has been designated as the consent authority for the area under section 20(1), that local authority,
- (b) otherwise, the Scottish Ministers.

*Heat network consent applications*

**22 Heat network consent applications**

- (1) A person may apply to the appropriate consent authority for a heat network consent.
- (2) An application under subsection (1) is referred to in this Act as a “heat network consent application”.
- (3) A person may make a heat network consent application in relation to—
  - (a) the construction of a heat network,
  - (b) the operation of a heat network, or
  - (c) both.

**23 Determining heat network consent applications**

- (1) The appropriate consent authority may—
  - (a) agree to a heat network consent application and grant a heat network consent, or
  - (b) refuse the application.
- (2) Subsection (3) applies to a heat network consent application relating to—
  - (a) the construction and operation of a heat network, or
  - (b) the operation of a heat network.
- (3) Before agreeing to the application and granting a heat network consent for a heat network, the appropriate consent authority must be satisfied that each person to whom the consent is to be granted has (or will have) a right to use each listed asset of the heat network for the purpose of operating the heat network.
- (4) Where the appropriate consent authority proposes to refuse a heat network consent application, it must give the applicant notice—
  - (a) stating that it proposes to refuse the application,
  - (b) stating the reasons why it proposes to refuse the application, and
  - (c) specifying the date by which the applicant may make representations about the proposed refusal to the appropriate consent authority.
- (5) In subsection (3), “listed asset”, in relation to a heat network, has the meaning given in section 91.

*Heat network consent conditions or limitations***24 Heat network consent conditions or limitations**

The appropriate consent authority may grant a heat network consent subject to any conditions or limitations it considers appropriate.

*Transfer, modification and revocation of heat network consent***25 Transfer of heat network consent**

- (1) The person holding a heat network consent may transfer the consent to another person with the agreement of the appropriate consent authority.
- (2) The appropriate consent authority may agree to a transfer of a heat network consent under subsection (1) subject to any—
  - (a) modification of any condition or limitation of the consent, or
  - (b) additional condition or limitation of the consent,as it considers appropriate.

**26 Modification of heat network consent**

- (1) The appropriate consent authority may make any modification of a heat network consent it considers appropriate.
- (2) The appropriate consent authority may modify a heat network consent under subsection (1)—
  - (a) following an application by the person holding the heat network consent, or
  - (b) on the appropriate consent authority's own initiative.
- (3) An application mentioned in subsection (2)(a) is referred to in this Act as a “heat network consent modification application”.
- (4) Where the appropriate consent authority modifies a heat network consent under subsection (1), it must give a copy of the consent as modified to the person holding the consent.

**27 Revocation of heat network consent**

- (1) The appropriate consent authority may revoke a heat network consent in such circumstances as may be specified by the Scottish Ministers by regulations.
- (2) Before revoking a heat network consent under subsection (1), the appropriate consent authority must give notice of the proposed revocation to the person holding the consent.
- (3) The notice must—
  - (a) state the reasons why the revocation is proposed, and
  - (b) specify the period (which is to be not less than 28 days from the date on which the notice is given) within which the person holding the consent may make representations about the proposed revocation to the appropriate consent authority.
- (4) The appropriate consent authority may revoke a heat network consent under subsection (1) by giving notice of revocation to the person holding the consent.

- (5) A notice of revocation must specify—
  - (a) the reasons for the revocation, and
  - (b) the date from which the revocation is to have effect (subject to section 28(2)).
- (6) The date referred to in subsection (5)(b) must be specified in accordance with any minimum period of notice to be given by a notice of revocation as may be specified in regulations under subsection (7).
- (7) The Scottish Ministers may by regulations make further provision about the procedure to be followed in connection with the revocation of a heat network consent under subsection (1).

## **28 Appeals against notice of revocation given by local authority**

- (1) Where a local authority gives a notice of revocation to a person under section 27(4), the person may appeal to the Scottish Ministers against the notice.
- (2) Where an appeal is made under subsection (1) against a revocation notice, the notice has no effect pending the final determination or withdrawal of the appeal.
- (3) The Scottish Ministers may by regulations make further provision about appeals under subsection (1).
- (4) Regulations under subsection (3) may in particular include provision about—
  - (a) the way in which appeals are to be made, including time limits for making appeals,
  - (b) matters that may be raised in appeals,
  - (c) the information to be provided when making appeals,
  - (d) the procedure in connection with determining appeals,
  - (e) the manner in which appeals are to be conducted,
  - (f) decisions that may be taken on appeal,
  - (g) how the determination of appeals is to be notified.
- (5) The provision that may be made by virtue of subsection (4)(e) includes provision about the holding of an inquiry or hearing for the purpose of determining an appeal, including—
  - (a) the hearing of evidence at an inquiry or hearing in public or otherwise including any procedure to apply where evidence is not to be heard in public or documentary evidence is not to be open to public inspection,
  - (b) the appointment of persons to hold an inquiry or hearing,
  - (c) the role of such persons,
  - (d) the timing of an inquiry or hearing,
  - (e) notification of an inquiry or hearing,
  - (f) attendance of required persons at an inquiry or hearing,
  - (g) giving of evidence of persons required to attend an inquiry or hearing,
  - (h) consequences of persons failing to attend an inquiry or hearing or to provide information required by an inquiry or hearing, including the creation of offences,

- (i) the payment of expenses by parties to the inquiry or hearing.
- (6) The maximum penalty that may be provided for in regulations under subsection (3) creating an offence is, on summary conviction, a fine not exceeding level 1 on the standard scale or imprisonment for a period not exceeding 3 months.
- (7) Regulations under subsection (3) may modify any enactment (including this Act).

*Applications to local authorities: Ministerial powers of call-in, direction and appeal*

**29 Call-in of heat network consent applications etc. by the Scottish Ministers**

- (1) The Scottish Ministers may give directions requiring an application of a type mentioned in subsection (2) to be referred to them instead of being dealt with by a local authority as the appropriate consent authority.
- (2) The types of applications are—
  - (a) a heat network consent application,
  - (b) a heat network consent modification application,
  - (c) an application for a consent, agreement or approval required by a condition to which a heat network consent is subject.
- (3) A direction under subsection (1)—
  - (a) must be set out in writing,
  - (b) may be withdrawn or modified by a subsequent direction,
  - (c) may be given to a particular local authority acting as the appropriate consent authority or to local authorities acting in that capacity generally,
  - (d) may relate either to a particular application or to applications of such description as may be specified in the direction.
- (4) Any application in respect of which a direction has effect under subsection (1) must be referred to the Scottish Ministers.
- (5) Where an application is referred to the Scottish Ministers under this section (a “called-in application”), sections 23, 24, 26 and 33(5) apply to the called-in application as they apply to an application that is to be determined by a local authority as the appropriate consent authority except that the references in those sections to “the appropriate consent authority” are to be read as references to “the Scottish Ministers”.
- (6) The Scottish Ministers may by regulations make further provision about directions under subsection (1) and the determination of called-in applications pursuant to such a direction.
- (7) Regulations under subsection (6) may in particular include provision about—
  - (a) the notification and publication of directions—
    - (i) given under subsection (1), or
    - (ii) withdrawn or modified under subsection (3)(b),
  - (b) the procedure for determining called-in applications.
- (8) Regulations under subsection (6) may modify any enactment (including this Act).

**30 Directions as to method of dealing with heat network consent applications etc. by local authorities**

- (1) The Scottish Ministers may by regulations make provision for or about regulating the manner in which applications mentioned in subsection (2) are to be dealt with by local authorities as appropriate consent authorities.
- (2) The applications are—
  - (a) a heat network consent application,
  - (b) a heat network consent modification application,
  - (c) an application for a consent, agreement or approval required by a condition to which a heat network consent is subject.
- (3) Regulations under subsection (1) may in particular make provision—
  - (a) for enabling the Scottish Ministers to give directions restricting the grant of an application mentioned in subsection (2), either indefinitely or during such period as may be specified in the directions, in respect of any such heat network, or in respect of a heat network of any such description, as may be so specified,
  - (b) for enabling the Scottish Ministers to give directions to a local authority as the appropriate consent authority requiring it, in respect of any such heat network, or in respect of a heat network of any such description, as may be specified in the directions—
    - (i) to consider, where the local authority is minded to grant a heat network consent, imposing a condition specified in, or of a nature indicated in, the directions, and
    - (ii) (unless the directions are withdrawn) not to grant the heat network consent without first satisfying the Scottish Ministers that such consideration has been given and that such a condition either will be imposed or need not be imposed,
  - (c) for requiring, or enabling directions to be made requiring, a local authority as the appropriate consent authority to give to the Scottish Ministers and to such other persons as may be specified in the regulations (or in directions given by the Scottish Ministers under the regulations) such information as may be so specified with respect to applications for heat network consent made to the local authority, including information as to the manner in which any such application has been dealt with.

**31 Appeals regarding applications for heat network consent etc. to local authorities**

- (1) Subsection (2) applies where a local authority as the appropriate consent authority—
  - (a) refuses a heat network consent application,
  - (b) grants a heat network consent, but subject to a condition or limitation,
  - (c) refuses an application for a consent, agreement or approval required by a condition to which a heat network consent is subject,
  - (d) grants an application for a consent, agreement or approval required by a condition to which a heat network consent is subject, but subject to a condition,
  - (e) modifies a heat network consent under section 26(1) (whether following a heat network consent modification application or on its own initiative),

- (f) refuses a heat network consent modification application,
- (g) fails to give notice, within the relevant period, of its decision to the applicant in relation to—
  - (i) a heat network consent application,
  - (ii) a heat network consent modification application,
  - (iii) an application for a consent, agreement or approval to which a heat network consent application is subject.
- (2) The applicant may appeal to the Scottish Ministers against the decision or failure (as the case may be) of the local authority.
- (3) In subsection (1)(g), “relevant period” means—
  - (a) such period as may be specified in regulations under section 35(1), or
  - (b) such other period as may be agreed in writing between the applicant and the local authority in relation to the application (before or after it is made).
- (4) The Scottish Ministers may by regulations make further provision about appeals under subsection (2).
- (5) Regulations under subsection (4) may in particular include provision about—
  - (a) the way in which appeals are to be made, including time limits for making appeals,
  - (b) matters that may be raised in appeals,
  - (c) the information to be provided when making appeals,
  - (d) the procedure in connection with determining appeals,
  - (e) the manner in which appeals are to be conducted,
  - (f) decisions that may be taken on appeal,
  - (g) how the determination of appeals is to be notified.
- (6) The provision that may be made by virtue of subsection (5)(e) includes provision about the holding of an inquiry or hearing for the purpose of determining an appeal, including—
  - (a) the hearing of evidence at an inquiry or hearing in public or otherwise including any procedure to apply where evidence is not to be heard in public or documentary evidence is not to be open to public inspection,
  - (b) the appointment of persons to hold an inquiry or hearing,
  - (c) the role of such persons,
  - (d) the timing of an inquiry or hearing,
  - (e) notification of an inquiry or hearing,
  - (f) attendance of required persons at an inquiry or hearing,
  - (g) giving of evidence of persons required to attend an inquiry or hearing,
  - (h) consequences of persons failing to attend an inquiry or hearing or to provide information required by an inquiry or hearing, including the creation of offences,
  - (i) the payment of expenses by parties to the inquiry or hearing.

- (7) The maximum penalty that may be provided for in regulations under subsection (4) creating an offence is, on summary conviction, a fine not exceeding level 1 on the standard scale or imprisonment for a period not exceeding 3 months.
- (8) Regulations under subsection (4) may modify any enactment (including this Act).

### *Compensation*

## **32 Compensation on modification or revocation of heat network consent**

- (1) The Scottish Ministers may by regulations make provision for or about the payment of compensation to the person holding a heat network consent in consequence of—
  - (a) the modification of a heat network consent as mentioned in section 26(2)(b),
  - (b) the revocation of a heat network consent in accordance with regulations under section 27.
- (2) Regulations under subsection (1) may in particular make provision about—
  - (a) the circumstances in which compensation is payable,
  - (b) the calculation of compensation,
  - (c) the procedure to be followed in connection with claiming compensation,
  - (d) the review of decisions made under the regulations,
  - (e) appeals against decisions made under the regulations.
- (3) Before making regulations under subsection (1), the Scottish Ministers must consult local authorities and such other persons as they consider appropriate.

### *Miscellaneous*

## **33 Form and manner etc. of applications under Part 2**

- (1) The Scottish Ministers may determine—
  - (a) the form and manner in which a relevant application is to be made,
  - (b) the information (including the information in the form of a document) that is to be included in a relevant application.
- (2) In determining under subsection (1)(b) the information that is to be included in a relevant application, the Scottish Ministers may determine that a relevant application of such description as may be specified in the determination must include a community engagement report.
- (3) A “community engagement report”, in relation to a relevant application, is a report describing—
  - (a) the community engagement undertaken by the applicant in relation to the proposed application before making the application in accordance with any guidance issued under section 34(1), and
  - (b) how the applicant has taken account of any representations received by virtue of the community engagement before making the application.
- (4) The Scottish Ministers must arrange for any determination under subsection (1) to be published in such manner as they consider appropriate.

- (5) The appropriate consent authority need not consider a relevant application that does not comply with a requirement determined under subsection (1).
- (6) Before making a determination under subsection (1), the Scottish Ministers must consult local authorities and such other persons as they consider appropriate.
- (7) In this section and sections 34 and 35, a “relevant application” means—
  - (a) a heat network consent application,
  - (b) a heat network consent modification application,
  - (c) an application for a consent, agreement or approval required by a condition to which a heat network consent is subject.

### **34 Effective community engagement: guidance**

- (1) The Scottish Ministers may issue guidance about undertaking effective community engagement in relation to a relevant application for the purpose of preparing a community engagement report.
- (2) Guidance under subsection (1) may in particular include guidance on—
  - (a) persons, or persons of a particular description, to be considered as forming part of a community for the purpose of undertaking effective community engagement in relation to a relevant application,
  - (b) how applicants are to undertake effective community engagement before making a relevant application including ways in which applicants should—
    - (i) consult communities, and
    - (ii) encourage participation by communities in the consultation.
- (3) Before issuing guidance under subsection (1), the Scottish Ministers must consult such persons as they consider appropriate.
- (4) The Scottish Ministers must publish guidance issued under subsection (1) in such manner as they consider appropriate.
- (5) A person whose relevant application must include a community engagement report in accordance with a determination under section 33(1)(b) must have regard to any guidance issued under subsection (1) in connection with the application.
- (6) In this section, “community engagement report” has the meaning given in section 33(3).

### **35 Regulations about decisions under Part 2**

- (1) The Scottish Ministers may by regulations make provision about—
  - (a) the procedure to be followed in—
    - (i) determining a relevant application, or
    - (ii) deciding whether to modify a heat network consent as mentioned in section 26(2)(b),
  - (b) publication and notification of—
    - (i) a relevant application,
    - (ii) determinations made in relation to it,

- (c) publication and notification of a decision to modify a heat network consent as mentioned in section 26(2)(b).
- (2) Regulations under subsection (1) may in particular make provision in connection with the consideration to be given, before determining a relevant application or deciding whether to modify a heat network consent as mentioned in section 26(2)(b), to the likely effect of the construction or operation (as the case may be) of the heat network concerned—
  - (a) on the environment generally and, in particular, in contributing to the reduction of greenhouse gas emissions (within the meaning of the Climate Change (Scotland) Act 2009), and
  - (b) in contributing to meeting the fuel poverty targets.
- (3) Before making regulations under subsection (1), the Scottish Ministers must consult—
  - (a) local authorities,
  - (b) the Scottish Fuel Poverty Advisory Panel, and
  - (c) such other persons as they consider appropriate.

**36 Applications and decisions under Part 2 where there is more than one appropriate consent authority**

- (1) The Scottish Ministers may by regulations make provision about the making of any application or decision under this Part in circumstances where there is more than one appropriate consent authority in relation to an application or decision.
- (2) Regulations under subsection (1) may modify this Act and any regulations made under it.

*Enforcement of requirement for heat network consent*

**37 Meaning of “enforcement authority”**

In this Part, the “enforcement authority” means—

- (a) the Scottish Ministers, or
- (b) such other person as the Scottish Ministers by regulations designate as the enforcement authority for the purposes of this Part.

**38 Power to require information about activities on land**

- (1) This section applies where—
  - (a) section 18(1) applies in relation to a heat network and it appears to the enforcement authority that the heat network—
    - (i) is being constructed (or has been constructed) on land without a heat network consent in relation to the heat network,
    - (ii) is being operated (or has been operated) on land without a heat network consent in relation to the heat network, or
  - (b) it appears to the enforcement authority that there has been a failure to comply with a condition or limitation to which a heat network consent in relation to a heat network situated on land is subject.

- (2) The enforcement authority may give notice outlining its concerns (a “contravention notice”) to any person who—
  - (a) is the owner or occupier of the land or has any other interest in it, or
  - (b) is carrying out operations on the land or is using it for any purpose.
- (3) A contravention notice may require the person to whom it is given to give such information as may be specified in the notice in relation to—
  - (a) any operations being carried out on the land, any use of the land and any other activities being carried out on the land,
  - (b) any matter relating to conditions or limitations to which a heat network consent in relation to a heat network situated on the land is subject.
- (4) In this section, references to—
  - (a) the construction or operation of a heat network on land include references to the construction or operation of a heat network under or over the land,
  - (b) a heat network situated on land include references to a heat network situated under or over the land,
  - (c) operations or activities on land include references to operations or activities under or over the land.

### **39 Enforcement notice**

- (1) Where section 18(1) applies in relation to a heat network and it appears to the enforcement authority that the heat network is being (or has been) constructed or operated—
  - (a) by a person on their own behalf without the person holding a heat network consent in relation to the construction or (as the case may be) operation of the heat network, the enforcement authority may give a written notice to the person,
  - (b) by a person on behalf of another person without the other person holding a heat network consent in relation to the construction or (as the case may be) operation of the heat network, the enforcement authority may give a written notice to the person or to the other person.
- (2) Where it appears to the enforcement authority that there has been a failure by the person holding a heat network consent to comply (or to secure compliance) with a condition or limitation to which the consent is subject, the enforcement authority may give a written notice to the person.
- (3) An enforcement notice must specify the date on which it is to take effect which must be no less than 28 days after the date on which the notice is given.
- (4) An enforcement notice must—
  - (a) specify the reasons why the notice has been given, and
  - (b) specify (either or both)—
    - (i) the steps that the enforcement authority requires the person to whom the notice is given (or another person acting on behalf of that person) to take,
    - (ii) the activities that the enforcement authority requires to cease,

in order to achieve (wholly or partly) either of the purposes mentioned in subsection (5).

- (5) The purposes are—
  - (a) the person’s compliance with section 18(1), or
  - (b) where the person’s failure to comply with section 18(1) has affected the condition of any land, restoring the land to its condition before the failure.
- (6) An enforcement notice may require in particular—
  - (a) the alteration or removal of any buildings or works,
  - (b) the carrying out of any building or other operations,
  - (c) any activity on the land concerned not to be carried out except to the extent specified in the notice.
- (7) An enforcement notice must specify the period for compliance with the notice, and may specify different periods within which different steps are required to be taken or (as the case may be) different activities are required to cease.
- (8) In this Part, an “enforcement notice” means a written notice given by the enforcement authority under subsection (1) or (2).

#### **40 Withdrawal or variation of enforcement notice**

- (1) The enforcement authority may—
  - (a) withdraw an enforcement notice given by it, or
  - (b) waive or relax any requirement of such a notice.
- (2) The enforcement authority may exercise the power under subsection (1) in relation to an enforcement notice regardless of whether the notice has taken effect.
- (3) Immediately after exercising a power under subsection (1) in relation to an enforcement notice, the enforcement authority must give notice of—
  - (a) the withdrawal of the notice, or (as the case may be)
  - (b) the waiver or relaxation of any requirement of the notice,to each person to whom the notice was given.
- (4) The withdrawal of an enforcement notice by the enforcement authority under subsection (1) does not affect the power of the enforcement authority to issue a further enforcement notice.

#### **41 Appeals against enforcement notice**

- (1) The Scottish Ministers may by regulations make provision for or about appeals against enforcement notices.
- (2) Regulations under subsection (1) may in particular include provision about—
  - (a) who may appeal,
  - (b) grounds of appeal,
  - (c) the way in which appeals are to be made,
  - (d) the information to be provided when making appeals,

- (e) the procedure for determining appeals,
  - (f) who may determine appeals,
  - (g) the manner in which appeals are to be conducted,
  - (h) decisions that may be taken on appeal,
  - (i) how the determination of appeals is to be notified.
- (3) Regulations under subsection (1) may modify any enactment (including this Act).

#### **42 Offence of failing to comply with enforcement notice**

- (1) If at any time after the end of the period for compliance with an enforcement notice—
- (a) any step required by the notice has not been taken, or
  - (b) any activity required by the notice to cease is being carried on,
- the person to whom the notice was given commits an offence.
- (2) A person who commits an offence under subsection (1) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum,
  - (b) on conviction on indictment, to a fine.
- (3) It is a defence for a person charged with an offence under subsection (1) to show that—
- (a) the person did everything that the person could reasonably be expected to do to secure compliance with the enforcement notice,
  - (b) the person had a reasonable excuse for failing to ensure that the step concerned was taken or (as the case may be) for failing to ensure the cessation of the carrying on of the activity concerned.
- (4) In this Part, references to the period for compliance with an enforcement notice are references to—
- (a) the period specified in the notice for compliance with it in accordance with section 39(7), or
  - (b) such extended period as the enforcement authority may allow for compliance with the notice.
- (5) For the purposes of subsection (4)(a), where an enforcement notice specifies that different periods apply to different steps or activities, references to the period for compliance with an enforcement notice, in relation to any step or activity, are references to the period at the end of which the step is required to have been taken or the activity is required to have ceased.

#### **43 Execution and cost of works required by enforcement notice**

- (1) This section applies if at any time after the end of the period for compliance with an enforcement notice any step required by the notice has not been taken.
- (2) The enforcement authority may—
- (a) enter the land in relation to which the steps were required to be taken and take those steps, and
  - (b) recover from the person to whom the enforcement notice was given any expenses reasonably incurred by the enforcement authority in doing so.

- (3) In determining the amount of expenses that may be recovered by it under subsection (2), the enforcement authority may include in that amount such proportion of its administrative expenses as it considers appropriate.
- (4) When taking steps under subsection (2), the enforcement authority may sell any materials removed by it from the land unless those materials are claimed by the owner of the materials within 3 days of their removal.
- (5) After any such sale the enforcement authority must pay the proceeds to the owner of the materials less the expenses recoverable by it from the owner of the materials.
- (6) A person commits an offence if the person, without reasonable excuse, intentionally obstructs the enforcement authority in exercising its powers under subsection (2).
- (7) A person who commits an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

*Heat network consent and planning permission*

**44 Deemed planning permission on Scottish Ministers granting or modifying heat network consent**

- (1) Section 57 of the Town and Country Planning (Scotland) Act 1997 (development with government authorisation) is amended as follows.
- (2) After subsection (2B) insert—
  - “(2C) On granting or modifying a heat network consent under section 23(1)(a) or 26(1), or pursuant to an appeal under section 31(2), of the Heat Networks (Scotland) Act 2021, the Scottish Ministers may give a direction for planning permission to be deemed to be granted, subject to such conditions (if any) as may be specified in the direction, for—
    - (a) so much of the operation or change of use to which the consent relates as constitutes development,
    - (b) any development ancillary to the operation or change of use to which the consent relates.
  - (2D) On modifying a heat network consent under section 26(1), or pursuant to an appeal under section 31(2), of the Heat Networks (Scotland) Act 2021, the Scottish Ministers may give one or more of the following directions (instead of, or as well as, a direction under subsection (2C))—
    - (a) a direction for an existing planning permission deemed to be granted by virtue of a direction under subsection (2C) (whenever made) to be varied as specified in the direction,
    - (b) a direction for any conditions subject to which any such existing planning permission was deemed to be granted to be varied as specified in the direction,
    - (c) a direction for any consent, agreement or approval given in respect of a condition subject to which any such existing planning permission was deemed to be granted to be treated as given in respect of a condition subject to which a new or varied planning permission is deemed to be granted.”.

**45 Combining applications to local authorities for heat network consent and planning permission**

- (1) This section applies where—
  - (a) a person who proposes to construct a heat network must first make both—
    - (i) a heat network consent application in relation the construction of the heat network, and
    - (ii) an application for planning permission in respect of the construction of the heat network, and
  - (b) both applications must be made to a local authority as the appropriate consent authority (in relation to heat network consent application) and the planning authority (in relation to the application for planning permission).
- (2) Both of the applications are to be considered by the local authority together but this is subject to any provision made in any regulations under subsection (3).
- (3) The Scottish Ministers may by regulations—
  - (a) provide that such procedural provisions of this Act as are specified in the regulations are not to apply to the person’s heat network consent application,
  - (b) provide that such procedural provisions of, or made under, the Town and Country Planning (Scotland) Act 1997 as are specified in the regulations are to apply to the heat network consent application instead,
  - (c) modify provisions of, or made under, the Town and Country Planning (Scotland) Act 1997 as they apply to the heat network consent application by virtue of paragraph (b).
- (4) In this section—

“planning authority” has the meaning given in section 1 of the Town and Country Planning (Scotland) Act 1997,

“planning permission” means planning permission under Part 3 of that Act,

“procedural provisions” means any provisions for or in connection with the procedure for determining an application.

**PART 3**

## HEAT NETWORK ZONES

*Designation of heat network zone***46 Power to designate heat network zone**

- (1) A local authority may at any time designate an area in its area that is particularly suitable for the construction and operation of a heat network in accordance with section 48.
- (2) The Scottish Ministers may designate an area in the area of a local authority that is particularly suitable for the construction and operation of a heat network in accordance with section 49.

- (3) In this Part, “heat network zone” means an area designated by—
- (a) a local authority—
    - (i) under subsection (1), or
    - (ii) pursuant to a direction under section 53(1)(a) or (2), or
  - (b) the Scottish Ministers under subsection (2).

**47 Duty on local authority to review heat network zoning in area**

- (1) Each local authority must carry out a review to consider whether one or more areas in its area is likely to be particularly suitable for the construction and operation of a heat network.
- (2) A local authority must carry out—
- (a) its first review under subsection (1) as soon as practicable after the day on which this section comes into force,
  - (b) each subsequent review under that subsection by no later than 5 years after the day on which the local authority last published a statement under subsection (6).
- (3) In carrying out a review under subsection (1), a local authority must have regard to the matters mentioned in section 48(1).
- (4) If, following a review under subsection (1), the local authority considers that one or more areas considered as part of the review is likely to be particularly suitable for the construction and operation of a heat network, the local authority must, in relation to each area—
- (a) proceed to consider whether to designate the area as a heat network zone in accordance with section 48, or
  - (b) request that the Scottish Ministers consider whether to designate the area as a heat network zone in accordance with section 49.
- (5) But a local authority may not make a request under subsection (4)(b) if the area is the subject of a direction under section 53.
- (6) After each review, the local authority must publish a statement in relation to each area considered as part of the review—
- (a) explaining whether the local authority considers that the area is likely to be particularly suitable for the construction and operation of a heat network,
  - (b) explaining the reasons for that view, and
  - (c) if the local authority considers that the area is likely to be particularly suitable for the construction and operation of a heat network—
    - (i) identifying the area by reference to a map, and
    - (ii) giving reasons for its decision under subsection (4)(a) or (b).
- (7) The Scottish Ministers may specify by regulations, in relation to a statement published under subsection (6)—
- (a) any further information that must be included in a statement,
  - (b) how it is to be published,
  - (c) the persons to whom copies of it are to be sent, and

- (d) such other requirements relating to the statement as they consider appropriate.

#### **48 Designation of heat network zone by local authority**

- (1) A local authority must, in considering whether to designate an area in its area as a heat network zone, have regard to the following matters—
  - (a) the potential for use by a heat network of—
    - (i) thermal energy generated from renewable sources,
    - (ii) waste heat or cold,
  - (b) buildings in the area that require considerable and consistent use of thermal energy,
  - (c) the nature and extent of existing infrastructure in the area that could assist in the development of a heat network in the area,
  - (d) the potential for a heat network in the area to contribute to meeting the fuel poverty targets,
  - (e) the potential for a heat network in the area to contribute to meeting the targets specified in section 92(1),
  - (f) any building assessment report received under section 65, and
  - (g) such other matter as the Scottish Ministers may specify by regulations.
- (2) Before deciding whether to designate an area as a heat network zone, a local authority must consult such persons, and in such manner, as the Scottish Ministers may specify by regulations.
- (3) Having had regard to the matters mentioned in subsection (1) and complied with the requirements under subsection (2), the local authority may—
  - (a) designate the area as a heat network zone, or
  - (b) decide not to designate the area as a heat network zone.
- (4) If a local authority designates an area as a heat network zone it must—
  - (a) identify the area in a document by reference to a map,
  - (b) specify in the document the day on which the designation takes effect, and
  - (c) publish the document in such manner as the Scottish Ministers may specify by regulations.
- (5) In subsection (1)(a)(ii), “waste heat or cold” means heat or cold generated as a result of a use of (or process affecting) land, which would disperse unused if released into air or water.

#### **49 Designation of heat network zone by Scottish Ministers**

- (1) This section applies where the Scottish Ministers are considering whether to designate an area in the area of a local authority as a heat network zone—
  - (a) pursuant to a request by the local authority under section 47(4)(b), or
  - (b) on the Scottish Ministers’ own initiative.
- (2) The Scottish Ministers must, in considering whether to designate the area as a heat network zone, have regard to the matters mentioned in section 48(1).

- (3) Before deciding whether to designate the area as a heat network zone, the Scottish Ministers must consult—
  - (a) each local authority in whose area the proposed heat network zone would be situated,
  - (b) such other persons as they consider appropriate.
- (4) Having had regard to the matters mentioned in section 48(1) and complied with the requirements under subsection (3), the Scottish Ministers may—
  - (a) designate the area as a heat network zone, or
  - (b) decide not to designate the area as a heat network zone.
- (5) If the Scottish Ministers designate an area as a heat network zone, they must—
  - (a) identify the area in a document by reference to a map,
  - (b) specify in the document the day on which the designation takes effect, and
  - (c) publish the document in such manner as they consider appropriate.

*Variation of heat network zone*

**50 Variation of heat network zone by local authority**

- (1) A local authority may vary a heat network zone situated in its area if the heat network zone was designated by the local authority under section 46(1).
- (2) In considering whether to vary a heat network zone under subsection (1), a local authority must have regard to the matters mentioned in section 48(1).
- (3) Before deciding whether to vary a heat network zone under subsection (1), a local authority must consult such persons, and in such manner, as the Scottish Ministers may specify by regulations.
- (4) Having had regard to the matters mentioned in section 48(1) and complied with the requirements under subsection (3), the local authority may—
  - (a) vary the heat network zone, or
  - (b) decide not to vary the heat network zone.
- (5) If the local authority varies the heat network zone, it must—
  - (a) identify the area of the heat network zone as varied in a document by reference to a map,
  - (b) specify in the document the day on which the variation takes effect, and
  - (c) publish the document in such manner as the Scottish Ministers may specify by regulations.

**51 Variation of heat network zone by Scottish Ministers**

- (1) The Scottish Ministers may vary a heat network zone—
  - (a) following a request by the local authority in whose area the heat network zone is situated, or
  - (b) on the Scottish Ministers' own initiative.

- (2) It does not matter for the purposes of subsection (1) whether the heat network zone was designated by—
  - (a) a local authority, or
  - (b) the Scottish Ministers.
- (3) In deciding whether to vary a heat network zone under subsection (1), the Scottish Ministers must have regard to the matters mentioned in section 48(1).
- (4) Before deciding whether to vary a heat network zone, the Scottish Ministers must consult—
  - (a) each local authority in whose area the heat network zone is situated,
  - (b) such other persons as they consider appropriate.
- (5) Having had regard to the matters mentioned in section 48(1) and complied with the requirements under subsection (4), the Scottish Ministers may—
  - (a) vary the heat network zone, or
  - (b) decide not to vary the heat network zone.
- (6) If the Scottish Ministers vary the heat network zone under subsection (5)(a), they must—
  - (a) identify the area of the heat network zone as varied in a document by reference to a map,
  - (b) specify in the document the day on which the variation takes effect, and
  - (c) publish the document in such manner as they consider appropriate.

*Local authorities acting jointly*

**52 Two or more local authorities acting jointly in relation to heat network zone**

- (1) Where an area proposed for designation as a heat network zone falls within the area of more than one local authority, each of the local authorities in whose area the proposed heat network zone would be situated may act jointly to—
  - (a) designate the area as a heat network zone under section 46(1),
  - (b) request under section 47(4)(b) that the Scottish Ministers consider whether to designate the area as a heat network zone.
- (2) Where two or more local authorities have acted jointly by virtue of subsection (1)(a) to designate as a heat network zone an area falling within the area of each of the local authorities, the local authorities may act jointly to vary the heat network zone under section 50(1).
- (3) Where two or more local authorities act jointly under subsection (1) or (2), references in sections 46, 48, 49, 50 and 51 to—
  - (a) a local authority are references to the local authorities acting jointly, and
  - (b) a local authority's area are references to the combined area of the local authorities.

*Ministerial direction and guidance*

**53 Ministerial power of direction to designate or vary heat network zone**

- (1) The Scottish Ministers may direct a local authority to—
  - (a) designate such area in the area of the local authority as the Scottish Ministers consider appropriate as a heat network zone,
  - (b) vary a heat network zone situated in the area of the local authority in such manner as the Scottish Ministers consider appropriate.
- (2) The Scottish Ministers may direct two or more local authorities to jointly designate such area falling within the areas of the local authorities as a heat network zone as the Scottish Ministers consider appropriate.
- (3) Subsection (4) applies where—
  - (a) two or more local authorities have jointly designated an area as a heat network zone—
    - (i) under section 46(1), or
    - (ii) pursuant to a direction under subsection (2), or
  - (b) the Scottish Ministers have designated as a heat network zone under section 46(2) an area falling within the areas of two or more local authorities.
- (4) The Scottish Ministers may direct the local authorities to jointly vary the heat network zone in such manner as the Scottish Ministers consider appropriate.
- (5) Before issuing a direction under subsection (1), (2) or (4), the Scottish Ministers must—
  - (a) have regard to the matters mentioned in section 48(1), and
  - (b) consult—
    - (i) each local authority in whose area the heat network zone is, or would be, situated, and
    - (ii) such other persons as they consider appropriate.
- (6) Section 48(4) applies to the designation of an area as a heat network zone pursuant to a direction under subsection (1) or (2) as it applies to the designation of a heat network zone under section 46(1).
- (7) Section 50(5) applies to the variation of a heat network zone pursuant to a direction under subsection (1) as it applies to the variation of a heat network zone under subsection (1) of that section.
- (8) Where two or more local authorities are acting jointly by virtue of subsection (2) or (4), section 48(4) or (as the case may be) section 50(5) applies jointly to the local authorities (but subject to the modification mentioned in subsection (9)).
- (9) The modification is that references in those sections to a local authority are to be read as if they were references to the local authorities acting jointly.
- (10) The Scottish Ministers may revise or revoke a direction under this section.

**54 Guidance**

- (1) The Scottish Ministers may issue guidance about—
  - (a) reviews under section 47(1),

- (b) the designation by local authorities of heat network zones,
  - (c) the variation by local authorities of heat network zones.
- (2) Guidance under subsection (1) may be addressed to—
- (a) a local authority, or more than one local authority, identified in the guidance, or
  - (b) all local authorities.
- (3) Before issuing guidance under subsection (1), the Scottish Ministers must consult—
- (a) the local authorities to whom the guidance is to be addressed,
  - (b) the Scottish Fuel Poverty Advisory Panel, and
  - (c) such other persons as they consider appropriate.
- (4) Local authorities to whom guidance under subsection (1) is addressed must have regard to the guidance in exercising their functions under this Part.
- (5) The Scottish Ministers must publish guidance issued under subsection (1) in such manner as they consider appropriate.

## PART 4

### HEAT NETWORK ZONE PERMITS

#### 55 Meaning of “permit authority”

In this Part, the “permit authority” means—

- (a) the Scottish Ministers, or
- (b) such other person as the Scottish Ministers may by regulations designate as the permit authority for the purposes of this Part.

#### 56 Requirement for heat network zone permit

- (1) The permit authority may by notice prohibit the operation of a heat network in such heat network zone as may be designated in the notice unless a heat network zone permit for the heat network zone is held by—
- (a) the person operating the heat network, or
  - (b) the person on whose behalf the heat network is operated.
- (2) But a notice under subsection (1) designating a heat network zone may not require a person who is entitled to operate a heat network in the heat network zone immediately before the day on which the notice takes effect to hold a heat network zone permit for the heat network zone in order to—
- (a) operate the heat network, or
  - (b) permit another person to operate the heat network on their behalf.
- (3) For the purposes of subsection (2), a person is entitled to operate a heat network if at that time the person—
- (a) holds a heat network consent in relation to the operation of the heat network, or
  - (b) is exempt from the requirement to hold a heat network consent in relation to the operation of the heat network by virtue of regulations under section 19(1).

- (4) But the permit authority may not issue a notice under subsection (1)—
  - (a) in such circumstances as may be specified,
  - (b) if any specified procedure has not been complied with.
- (5) The permit authority may revoke a notice issued under subsection (1).
- (6) But the permit authority may not revoke a notice issued under subsection (1)—
  - (a) in such circumstances as may be specified,
  - (b) if any specified procedure has not been complied with.
- (7) The permit authority must—
  - (a) publish a notice issued under subsection (1), and
  - (b) give notice of the revocation of a notice issued under subsection (1),in such form and manner as may be specified.
- (8) In this section, “specified” means specified in regulations made by the Scottish Ministers.
- (9) In this Part, a “heat network zone permit” is a permit issued by the permit authority.

#### **57 Applications for heat network zone permit**

- (1) The Scottish Ministers may by regulations make provision for or about the process for inviting, making and determining applications for a heat network zone permit.
- (2) Regulations under subsection (1) may in particular make provision about—
  - (a) how the permit authority is to invite applications for a heat network zone permit,
  - (b) persons who may apply for a heat network zone permit,
  - (c) the form and manner of making an application for a heat network zone permit,
  - (d) the information (including the information in the form of a document) that must be included in an application for a heat network zone permit,
  - (e) publication or notification of applications for a heat network zone permit,
  - (f) publication or notification of the permit authority’s decision whether or not to grant an application for a heat network zone permit,
  - (g) publication or notification of a heat network zone permit.
- (3) Regulations under subsection (1) may make different provision for different heat network zones.

#### **58 Heat network zone permit: duration**

A heat network zone permit continues to have effect for the period specified in it unless it is revoked in accordance with section 59.

#### **59 Heat network zone permit: revocation**

- (1) The permit authority may revoke a heat network zone permit held by a person—
  - (a) if the heat networks licence held by the person is revoked under section 11(1),

- (b) if a heat network consent held by the person in relation to the operation of a heat network situated in the heat network zone to which the permit relates is revoked under section 27, or
  - (c) in such other circumstances as may be specified by the Scottish Ministers by regulations.
- (2) Before revoking a heat network zone permit under subsection (1), the permit authority must give notice of the proposed revocation to the person holding the permit.
- (3) The notice must—
  - (a) state the reasons why the revocation is proposed, and
  - (b) specify the period (which is to be not less than 28 days from the date on which the notice is given) within which the person holding the permit may make representations about the proposed revocation to the permit authority.
- (4) The Scottish Ministers may by regulations make further provision about the procedure to be followed in connection with the revocation of a heat network zone permit under subsection (1).

#### **60 Appeals against revocation of heat network zone permit**

- (1) The Scottish Ministers may by regulations make provision for or about appeals against revocation of heat network zone permits.
- (2) Regulations under subsection (1) may in particular make provision about—
  - (a) who may appeal,
  - (b) grounds of appeal,
  - (c) the way in which appeals are to be made,
  - (d) the information to be provided when making appeals,
  - (e) the procedure for determining appeals,
  - (f) who may determine appeals,
  - (g) how the determination of appeals is to be notified.
- (3) Regulations under subsection (1) may modify any enactment (including this Act).

#### **61 Compensation on revocation of heat network zone permit**

- (1) The Scottish Ministers may by regulations make provision for or about the payment of compensation to the person holding a heat network zone permit in consequence of the revocation of a heat network zone permit as mentioned in section 59(1)(c).
- (2) Regulations under subsection (1) may in particular make provision about—
  - (a) the circumstances in which compensation is payable,
  - (b) the calculation of compensation,
  - (c) the procedure to be followed in connection with claiming compensation,
  - (d) the review of decisions made under the regulations,
  - (e) appeals against decisions made under the regulations.

**62 Enforcement of requirement for heat network zone permit**

- (1) Where a person operates a heat network in a heat network zone on their own behalf without holding a heat network zone permit for the heat network zone in contravention of a notice issued under section 56(1), the person commits an offence.
- (2) Where a person operates a heat network in a heat network zone on behalf of another person and the other person does not hold a heat network zone permit for the heat network zone in contravention of a notice issued under section 56(1), the other person commits an offence.
- (3) It is a defence for a person charged with an offence under subsection (1) or (2) to show that the person had a reasonable excuse for contravening the notice issued under section 56(1).
- (4) A person who commits an offence under subsection (1) or (2) is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum,
  - (b) on conviction on indictment, to a fine.

**PART 5**

BUILDING ASSESSMENT REPORTS

**63 Building assessment reports**

- (1) A relevant person must prepare reports in relation to each non-domestic building in which the person has an interest.
- (2) A report prepared under subsection (1) (a “building assessment report”) must set out, in relation to each non-domestic building covered by the report, an assessment of—
  - (a) the potential for the non-domestic building to be supplied with thermal energy by means of a heat network,
  - (b) the period for which any system providing thermal energy to the non-domestic building is expected to continue to operate effectively and efficiently.
- (3) A building assessment report must—
  - (a) be prepared in the manner as may be specified, and
  - (b) at such intervals as may be specified.
- (4) For the purposes of this section—
  - (a) a relevant person has an interest in a non-domestic building if—
    - (i) the relevant person has a right of ownership in the non-domestic building,
    - (ii) the relevant person has such other interest in the non-domestic building as may be specified,
  - (b) where more than one relevant person has a right of ownership, or other interest as may be specified by regulations under paragraph (a)(ii), in a non-domestic building, a building assessment report must be prepared by one of those persons.
- (5) In this section, “specified” means specified in regulations made by the Scottish Ministers.

**64 Exemptions from duty to prepare building assessment reports**

- (1) The Scottish Ministers may by regulations provide that the requirement imposed by section 63(1) does not apply to—
  - (a) specified relevant persons,
  - (b) relevant persons of a specified description.
- (2) The Scottish Ministers may by regulations provide that the requirement under section 63(1) does not apply in relation to—
  - (a) specified non-domestic buildings,
  - (b) non-domestic buildings of a specified description.
- (3) In this section, “specified” means specified in the regulations.

**65 Notification of building assessment reports**

As soon as reasonably practicable after preparing a building assessment report, a relevant person must—

- (a) send the report to each local authority in whose area a non-domestic building to which the report relates is situated, and
- (b) send a copy of the report to the Scottish Ministers.

**66 Guidance about building assessment reports**

- (1) The Scottish Ministers may issue guidance about the preparation of building assessment reports.
- (2) In preparing a building assessment report, a relevant person must have regard to any guidance issued under subsection (1).
- (3) The Scottish Ministers must publish guidance issued under subsection (1) in such manner as they consider appropriate.

**67 Interpretation of Part 5**

In this Part—

“building assessment report” has the meaning given in section 63(2),

“non-domestic building” means a building other than a dwelling,

“relevant person” means—

- (a) a Scottish public authority within the meaning of section 3(1)(a) of the Freedom of Information (Scotland) Act 2002,
- (b) such other person, or person of such description, as the Scottish Ministers may specify by regulations.

**PART 6**

POWERS OF LICENCE HOLDERS

*Compulsory acquisition of land*

**68 Compulsory acquisition of land by licence holder**

- (1) A licence holder may, with the authorisation of the Scottish Ministers, compulsorily acquire land that is required for the construction or operation of a heat network.
- (2) Subsection (1) includes in particular the power to acquire—
  - (a) any right or interest in or over land,
  - (b) a servitude or other right in or over land by the creation of a new right.
- (3) The Scottish Ministers must not authorise under subsection (1) any acquisition in relation to land which belongs to Her Majesty in right of Her private estates unless the appropriate authority consents to the acquisition.
- (4) The Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 applies in relation to an acquisition under subsection (1) as if—
  - (a) this section were contained in an Act in force immediately before the commencement of that Act, and
  - (b) the licence holder were a local authority.
- (5) Subsection (1) does not apply in relation to land held or used by or on behalf of a Minister of the Crown or a department of the Government of the United Kingdom.
- (6) In subsection (3)—
  - (a) the reference to Her Majesty’s private estates is to be construed in accordance with section 1 of the Crown Private Estates Act 1862,
  - (b) the “appropriate authority” means the person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Scottish Ministers.
- (7) In this Part, a “licence holder” means a person holding a heat networks licence.

*Wayleave rights*

**69 Network wayleave right**

- (1) In this Part, a “network wayleave right” is a right for a licence holder to convey steam or liquids in land for a purpose connected with the supply of thermal energy by means of a heat network by the licence holder.
- (2) A network wayleave right in respect of land includes a power—
  - (a) to install and keep installed heat network apparatus in the land,
  - (b) to enter upon the land to install, inspect, maintain, adjust, alter, repair, replace, upgrade, operate or remove the heat network apparatus, and
  - (c) to carry out any works in respect of the land that are reasonably necessary or incidental to the exercise of the network wayleave right.
- (3) A network wayleave right in respect of land may be conferred on a licence holder—
  - (a) by the owner of the land, either—

- (i) by agreement with the licence holder, or
    - (ii) unilaterally,
  - (b) by a necessary wayleave, or
  - (c) by positive prescription (see subsection (8)).
- (4) A wayleave document may include a development condition.
- (5) A “development condition” is a condition in a wayleave document restricting or regulating the development or use of the land to which the wayleave document relates by a relevant person as may be required to prevent interference with the exercise of the network wayleave right conferred by the wayleave document.
- (6) A development condition may in particular include a condition—
- (a) requiring such operations or activities as may be specified in the wayleave document to be carried out on, under or over the land,
  - (b) requiring the land to be used in such way as may be so specified.
- (7) In subsection (5), a “relevant person” means—
- (a) the owner or tenant of the land,
  - (b) any other person (other than the licence holder) who has a right to use the land.
- (8) Subsection (2) of section 3 of the Prescription and Limitation (Scotland) Act 1973 (positive servitudes and public rights of way) applies to a network wayleave right in respect of land as it applies to a positive servitude over land but as if—
- (a) in that subsection—
    - (i) a reference to a positive servitude were a reference to a network wayleave right, and
    - (ii) a reference to possession of a servitude were a reference to possession by a licence holder of a network wayleave right, and
  - (b) subsection (4) of that section does not apply to the application of subsection (2) of that section by this subsection.
- (9) A network wayleave right constitutes a real right.
- (10) The installation of heat network apparatus in land by a licence holder in the exercise of a network wayleave right does not confer ownership of the heat network apparatus on the owner of the land.
- (11) In this Part—
- “heat network apparatus” means apparatus designed or adapted for use in connection with a heat network and includes any structure for housing, or for providing access to, such apparatus,
- “land” does not include a road within the meaning of section 107 of the New Roads and Street Works Act 1991,
- “necessary wayleave” means a necessary wayleave granted by the Scottish Ministers under section 70(1),
- “owner”, in relation to land, means a person who has a right to the land whether or not that person has completed title; but if, in relation to the land (or, if the land is held pro indiviso, in relation to any pro indiviso share in it) more than one person

falls within that description of owner, then “owner” means such person who has most recently acquired such right,

“wayleave document” means a written document conferring a network wayleave right on a licence holder under subsection (3)(a).

- (12) In this Part, a reference to heat network apparatus in land includes a reference to heat network apparatus under, over, across, along or on the land.

## **70 Acquisition of necessary wayleave**

- (1) The Scottish Ministers may, on an application by a licence holder, grant a necessary wayleave to a licence holder conferring a network wayleave right on the licence holder in respect of land if they consider that it is necessary or expedient for the licence holder to exercise the right for a purpose connected with the supply of thermal energy by means of a heat network by the licence holder.
- (2) A necessary wayleave—
- (a) has effect for the period specified in the necessary wayleave,
  - (b) is subject to such terms and conditions as the Scottish Ministers consider appropriate.
- (3) A necessary wayleave may in particular include a development condition.
- (4) “Development condition” is to be construed in accordance with section 69(5) to (7) except that the references in subsections (5) and (6) of that section to a wayleave document are to be read as if they were references to a necessary wayleave.
- (5) A licence holder may apply to the Scottish Ministers for a necessary wayleave in respect of land under this section only if—
- (a) either—
    - (i) the licence holder has given notice to the owner of the land setting out the licence holder’s request to acquire a network wayleave right under section 69(3)(a), or
    - (ii) where the licence holder cannot ascertain the name or address of the owner of the land after reasonable enquiry, the licence holder has given notice in such form and manner as may be specified by the Scottish Ministers by regulations, and
  - (b) one of the conditions mentioned in subsection (6) applies.
- (6) The conditions are that the owner of the land—
- (a) has given the licence holder notice in writing that the owner will not enter into or grant a wayleave document,
  - (b) has agreed to enter into or grant a wayleave document but (either or both)—
    - (i) subject to terms and conditions to which the licence holder objects,
    - (ii) a person with an interest in the land (other than the owner) will not enter into, or consent to, the wayleave document, or
  - (c) has not agreed to enter into or grant a wayleave document before the end of the period specified by the licence holder in the notice given under subsection (5)(a)(i) or (ii).

- (7) A notice under subsection (5)(a)(i) must—
  - (a) state the reasons why the conferral of a network wayleave right is sought, and
  - (b) specify the period (which is to be not less than 28 days from the date on which the notice is given) within which the owner of the land must agree to enter into or grant a wayleave document.
- (8) Before granting a necessary wayleave in respect of land, the Scottish Ministers must give the following persons the opportunity to make representations—
  - (a) the owner of the land, and
  - (b) where sub-paragraph (ii) of subsection (6)(b) applies, the person referred to in that sub-paragraph.
- (9) Subsection (1) does not apply in relation to land held or used by or on behalf of a Minister of the Crown or a department of the Government of the United Kingdom.

## **71 Assignment of network wayleave rights**

- (1) A network wayleave right may be assigned by a licence holder to another licence holder.
- (2) But a network wayleave right in respect of land that is conferred by a necessary wayleave may be assigned to another licence holder only with the consent of the Scottish Ministers.
- (3) A wayleave document is void to the extent that—
  - (a) it prevents or limits the assignment of the network wayleave right to another licence holder,
  - (b) it makes the assignment of the network wayleave right to another licence holder subject to a condition (including a condition requiring the payment of money).

## **72 Variation of network wayleave right**

- (1) A network wayleave right in respect of land (however conferred) may only be varied—
  - (a) by agreement between the owner of the land and the licence holder entitled to the benefit of the network wayleave right (a “variation agreement”), or
  - (b) in accordance with this section.
- (2) A licence holder may apply to the Scottish Ministers to vary a network wayleave right in respect of land under this section only if—
  - (a) either—
    - (i) the licence holder has given notice to the owner of the land setting out the licence holder’s request to vary the network wayleave right, or
    - (ii) where the licence holder cannot ascertain the name or address of the owner of the land after reasonable enquiry, the licence holder has given notice in such form and manner as may be specified by the Scottish Ministers by regulations, and
  - (b) one of the conditions mentioned in subsection (3) applies.
- (3) The conditions are that the owner of the land—
  - (a) has given the licence holder notice in writing that the owner will not enter into a variation agreement,

- (b) has agreed to enter into a variation agreement but (either or both)—
    - (i) subject to terms and conditions to which the licence holder objects,
    - (ii) a person with an interest in the land (other than the owner) will not enter into, or consent to, the variation agreement,
  - (c) has not agreed to enter into a variation agreement before the end of the period specified by the licence holder in the notice given under subsection (2)(a)(i) or (ii).
- (4) An owner of land may apply to the Scottish Ministers to vary a network wayleave right in respect of land under this section only if—
- (a) the owner has given notice to the licence holder setting out the owner’s request to vary the network wayleave right, and
  - (b) one of the conditions mentioned in subsection (5) applies.
- (5) The conditions are that the licence holder—
- (a) has given the owner of the land notice in writing that the licence holder will not enter into a variation agreement,
  - (b) has agreed to enter into a variation agreement but subject to terms and conditions to which the owner of the land objects,
  - (c) has not agreed to enter into a variation agreement before the end of the period specified by the owner of the land in the notice given under subsection (4)(a).
- (6) A notice under subsection (2)(a)(i) or (4)(a) must—
- (a) state the reasons why the variation agreement is proposed, and
  - (b) specify the period (which is to be not less than 28 days from the date on which the notice is given) after which, if agreement is not reached, the person giving the notice may apply to the Scottish Ministers for the grant of a variation.
- (7) The Scottish Ministers may—
- (a) following an application by a licence holder entitled to the benefit of a network wayleave right, grant a variation of the network wayleave right if they consider that it is necessary or expedient for the licence holder to exercise the right as varied for a purpose connected with the supply of thermal energy by means of a heat network by the licence holder,
  - (b) following an application by the owner of land in respect of which a network wayleave right is exercisable, grant a variation of the network wayleave right if they consider it is appropriate to do so.
- (8) In considering for the purposes of subsection (7)(b) whether it is appropriate to grant a variation of a network wayleave right, the Scottish Ministers may in particular consider whether—
- (a) the exercise of the network wayleave right appears to them to materially prejudice the owner’s enjoyment or use of the land,
  - (b) any variation would not substantially increase the cost or diminish the quality of the supply provided by the licence holder’s heat network to persons who rely (or may in the future rely) on the supply of thermal energy by means of the heat network concerned, and

- (c) any variation would not result in the licence holder incurring substantial additional expenditure.
- (9) Before granting a variation of a network wayleave right, the Scottish Ministers must—
  - (a) where an application is made by the licence holder, give the following persons the opportunity to make representations—
    - (i) the owner of the land,
    - (ii) where sub-paragraph (ii) of subsection (3)(b) applies, the person referred to in that sub-paragraph,
  - (b) where an application is made by the owner of the land, give the licence holder the opportunity to make representations.

### **73 Compensation on variation of a network wayleave right**

- (1) Where a network wayleave right is varied under section 72(7)(a) so as to place or increase a burden on—
  - (a) an occupier of the land, or
  - (b) where the occupier is not also the owner of the land, the owner,either or both of those persons may recover from the licence holder compensation in respect of the variation of the network wayleave right.
- (2) Any dispute about compensation under this section is to be referred to and determined by the Lands Tribunal for Scotland.
- (3) Sections 9 and 11 of the Land Compensation (Scotland) Act 1963 apply in relation to any determination under subsection (1) as if—
  - (a) this section were referred to in section 9(1) of that Act, and
  - (b) references in section 11 of that Act to the acquiring authority were references to the licence holder concerned.
- (4) The Scottish Ministers may by regulations make further provision about compensation payable under this section.

### **74 Discharge of network wayleave right**

- (1) A network wayleave right in respect of land (however conferred) may only be discharged by the licence holder entitled to the benefit of the network wayleave right, either—
  - (a) by agreement with the owner of the land, or
  - (b) unilaterally.
- (2) A licence holder must discharge a network wayleave right under subsection (1)(a) if (and to the extent that) the right relates to heat network apparatus that has ceased to be used for the purposes of a heat network.

### **75 Registration of network wayleave rights**

- (1) The Scottish Ministers may by regulations make provision for or about the registration of network wayleave rights.
- (2) Regulations under subsection (1) may in particular include provision about—

- (a) how a network wayleave right is to be registered,
  - (b) the information (including information in the form of a document) that must be included as part of any entry in the register,
  - (c) who is required to establish and maintain a register of network wayleave rights,
  - (d) fees payable in connection with the registration of a network wayleave right,
  - (e) the form and manner of any register of network wayleave rights,
  - (f) how the register is to be made available for inspection by members of the public,
  - (g) what payment (if any) the licence holder is entitled to charge for supplying documents relating to network wayleave rights to members of the public,
  - (h) the consequences of failure to comply with the requirements of the registration.
- (3) Regulations under subsection (1) may modify any enactment (including this Act).

**76 Requirement to remove apparatus when notified**

- (1) This section applies where—
- (a) a person (the “right holder”) has a right to remove (or require the removal of) any heat network apparatus installed in the land by a licence holder, and
  - (b) the right holder seeks the removal of all or part of the heat network apparatus.
- (2) The right holder must give written notice to the licence holder who is operating (or who has most recently operated) the heat network of which the heat network apparatus forms part requiring the licence holder to remove such part of the heat network apparatus as may be specified in the notice.
- (3) The licence holder must comply with the notice given under subsection (2) by no later than the end of the period of 3 months beginning with the day on which the notice is given unless subsection (4) applies.
- (4) This subsection applies if, before the end of the period of 3 months mentioned in subsection (3), the licence holder—
- (a) applies to the Scottish Ministers for the grant of a necessary wayleave, or
  - (b) by virtue of section 68(1), submits a compulsory purchase order in respect of the land to the Scottish Ministers for confirmation by them.
- (5) If subsection (4) applies and the Scottish Ministers—
- (a) refuse the application for the grant of a necessary wayleave, or (as the case may be)
  - (b) decide not to confirm the compulsory purchase order,

the licence holder must comply with the notice given under subsection (2) by no later than the end of the period of 3 months beginning with the day on which the licence holder receives notice of the Scottish Ministers’ decision.

**77 Compensation in connection with network wayleave rights**

- (1) Where a necessary wayleave is granted to a licence holder under section 70(1)—
- (a) the occupier of the land, and
  - (b) where the occupier is not also the owner of the land, the owner,

may recover from the licence holder compensation in respect of the grant.

- (2) Where the exercise of a network wayleave right by or on behalf of a licence holder in relation to land—
  - (a) causes damage to the land or a thing situated on the land, the licence holder is liable to pay compensation to a person with an interest in the land or thing,
  - (b) disturbs a person’s enjoyment of the land or a thing situated on the land, the licence holder is liable to pay compensation to the person in respect of the disturbance.
- (3) Any dispute about compensation under this section is to be referred to and determined by the Lands Tribunal for Scotland.
- (4) Sections 9 and 11 of the Land Compensation (Scotland) Act 1963 apply in relation to any determination under subsection (3) as if—
  - (a) this section were referred to in section 9(1) of that Act, and
  - (b) references in section 11 of that Act to the acquiring authority were references to the licence holder concerned.
- (5) The Scottish Ministers may by regulations make further provision about compensation payable under this section.

*Other powers over land*

**78 Power to carry out survey**

- (1) A licence holder may carry out a survey of land for the purpose of determining whether the land is suitable for a purpose connected with the construction or operation of a heat network.
- (2) Before carrying out a survey of land under subsection (1), the licence holder must give the occupier of the land at least 14 days’ notice of the intention to carry out the survey.
- (3) If subsection (4) applies, a right to carry out a survey of any land under subsection (1) includes the right to search and bore the land for the purposes of ascertaining—
  - (a) the nature of the subsoil of the land,
  - (b) the presence of minerals or other matter in the land.
- (4) This subsection applies if notice given under subsection (2) includes notice of the intention to carry out the work mentioned in subsection (3).
- (5) A person carrying out a survey of land under subsection (1) has a right of entry to the land at all reasonable times to carry out the survey but must—
  - (a) when seeking to enter the land in order to carry out the survey, provide evidence of the person’s authority to so act on request by an occupier or the owner of the land,
  - (b) carry out the survey in a manner that ensures as little disruption as possible is caused to any occupier or owner of the land,
  - (c) endeavour—
    - (i) to ensure that as little damage as possible is caused by the exercise of the person’s powers under this section, and
    - (ii) if any damage is caused, take reasonable steps to remedy the damage.

- (6) A person commits an offence if the person, without reasonable excuse, intentionally obstructs another person (a “relevant person”) in the exercise of the relevant person’s power to enter upon and survey the land under this section.
- (7) A person who commits an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**79 Power to enter land to replace or repair apparatus**

- (1) A licence holder may exercise a network land right for a purpose connected with the supply of thermal energy by means of a heat network by the licence holder.
- (2) In this Part, a “network land right” is a power—
  - (a) to install heat network apparatus in replacement for, or in addition to, existing heat network apparatus that is lawfully situated in land,
  - (b) to inspect, maintain, adjust, alter, repair, replace, upgrade, operate, remove or add to any existing heat network apparatus that is situated in land,
  - (c) to carry out any works to the land that are necessary for or incidental to the powers mentioned in paragraph (a) or (b).
- (3) The works mentioned in subsection (2)(c) include felling, lopping or cutting back the roots of any tree or shrub on, under or over the land that is in close proximity to heat network apparatus that is, is being or is to be installed by or on behalf of the licence holder, in order to prevent the tree or shrub—
  - (a) from obstructing or interfering with the installation, maintenance or operation of the heat network apparatus, or
  - (b) from constituting a danger to persons.
- (4) The licence holder must give the owner and any occupier of the land concerned at least 7 days’ notice of the intention by or on behalf of the licence holder to enter onto the land for the purpose of exercising the network land rights specified in the notice.
- (5) Subsection (4) does not apply if the network land rights that the licence holder proposes to exercise are to be exercised in order to carry out emergency works.
- (6) Where the licence holder exercises a network land right to carry out emergency works, the licence holder must notify the owner and any occupier of the land of the works carried out as soon as possible after the carrying out of those works.
- (7) A person exercising a network land right in relation to any land has a right of entry to the land at all reasonable times to exercise the network land right but must—
  - (a) when seeking to enter the land in order to exercise a network land right, provide evidence of the person’s authority to so act on request by an owner or (as the case may be) an occupier of the land,
  - (b) exercise the network land right in a manner that ensures as little disruption as possible is caused to the owner and any occupier of the land,
  - (c) endeavour—
    - (i) to ensure that as little damage as possible is caused by the exercise of the person’s powers under this section, and
    - (ii) if any damage is caused, take reasonable steps to remedy the damage.

- (8) A person commits an offence if that person, without reasonable excuse, intentionally obstructs another person (a “relevant person”) in the exercise of the relevant person’s power to enter upon the land and exercise a network land right under this section.
- (9) A person who commits an offence under subsection (8) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (10) In this section, “emergency works” means works carried out by virtue of a network land right for the purpose of—
  - (a) stopping anything already occurring, or
  - (b) preventing anything imminent from occurring that is likely to cause—
    - (i) danger to persons or property,
    - (ii) the interruption of any supply provided by the licence holder,and any other works that are reasonable (in all circumstances) to carry out with those works.

## **80 Restrictions on powers of licence holders**

- (1) This section applies where—
  - (a) land is occupied by a statutory undertaker and the carrying out of a survey of the land under section 78(1) is likely to obstruct or interfere with the statutory undertaker’s undertaking, or
  - (b) land is occupied by a statutory undertaker and the exercise of a network land right in relation to the land under section 79(1) is likely to obstruct or interfere with the statutory undertaker’s undertaking.
- (2) Where this section applies, a licence holder may exercise the power mentioned in section 78(1) or 79(1) only with the consent of the statutory undertaker concerned.
- (3) But consent is not required under subsection (2) if it is withheld unreasonably by the statutory undertaker.
- (4) It is for the Scottish Ministers to determine any question which arises as to whether consent has been withheld unreasonably for the purposes of subsection (3), and their decision is final.
- (5) In this section—

“statutory undertaker” means—

  - (a) the holder of a licence under section 6(1) of the Electricity Act 1989,
  - (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986,
  - (c) the Civil Aviation Authority,
  - (d) a holder of a licence under Chapter 1 of the Transport Act 2000,
  - (e) the operator of an electronic communications code network within the meaning of paragraph 1(1) of schedule 17 of the Communications Act 2003,
  - (f) any other person who is a statutory undertaker within the meaning of section 214(1) of the Town and Country Planning (Scotland) Act 1997,

“undertaking”—

- (a) means, in relation to a person mentioned in paragraphs (a) to (e) in the definition of “statutory undertaker”, the person’s undertaking,
- (b) means, in relation to Scottish Water, its core functions within the meaning of section 70(2) of the Water Industry (Scotland) Act 2002,
- (c) otherwise has the meaning given in the Town and Country Planning (Scotland) Act 1997.

## **81 Compensation for damage or disturbance**

- (1) Where the exercise of a power under section 78(1) or 79(1) by or on behalf of a licence holder in relation to land—
  - (a) causes damage to the land or a thing situated on the land, the licence holder is liable to pay compensation to a person with an interest in or over the land or the thing,
  - (b) disturbs a person’s enjoyment of the land or a thing situated on the land, the licence holder is liable to pay compensation to the person in respect of the disturbance.
- (2) Any dispute about compensation under this section is to be referred to and determined by the Lands Tribunal for Scotland.
- (3) Sections 9 and 11 of the Land Compensation (Scotland) Act 1963 apply in relation to any determination under subsection (2) as if—
  - (a) this section were referred to in section 9(1) of that Act, and
  - (b) references in section 11 of that Act to the acquiring authority were references to the licence holder concerned.
- (4) The Scottish Ministers may by regulations make further provision about compensation payable under this section.

### *Road works*

## **82 Power to carry out road works**

- (1) A licence holder may, for a purpose connected with the supply of thermal energy by means of a heat network, carry out the works mentioned in subsection (2) if the heat networks licence held by the licence holder provides that the licence holder may carry out such works.
- (2) The works referred to in subsection (1) are—
  - (a) installing heat network apparatus in a road,
  - (b) inspecting, maintaining, adjusting, repairing, altering or renewing heat network apparatus installed in a road,
  - (c) changing the position of heat network apparatus in a road,
  - (d) removing heat network apparatus from a road,
  - (e) works required for or incidental to works mentioned in any of paragraphs (a) to (d), including in particular—
    - (i) opening or breaking up a road,

- (ii) opening or breaking up a sewer, drain or tunnel under a road,
  - (iii) tunnelling or boring under a road, and
  - (iv) removing or using all earth and materials in or under a road.
- (3) The power of a licence holder under subsection (1) to—
- (a) place on, over or along a road a structure for housing any other heat network apparatus, or
  - (b) inspect, maintain, adjust, repair, alter or renew any such structure,
- may be exercised only with the consent of the road works authority.
- (4) But consent is not required under subsection (3) if it is withheld unreasonably by the road works authority.
- (5) The power of a licence holder under subsection (1) to open or break up a road which is not a public road may be exercised only with the consent of the road works authority.
- (6) But consent is not required under subsection (5) if—
- (a) the opening or breaking up of the road constitutes emergency works, or
  - (b) consent is withheld unreasonably by the road works authority.
- (7) It is for the Scottish Ministers to determine any question which arises as to whether consent has been withheld unreasonably for the purposes of subsection (4) or (6)(b), and their decision is final.
- (8) In this section—
- “emergency works” has the same meaning as in Part 4 of the New Roads and Street Works Act 1991 (see section 111 of that Act),
  - “public road” means a road which a roads authority has a duty to maintain,
  - “road” has the same meaning as in Part 4 of the New Roads and Street Works Act 1991 (see section 107 of that Act),
  - “road works authority” has the same meaning as Part 4 of that Act (see section 108 of that Act),
  - “roads authority” has the same meaning as in section 151 of the Roads (Scotland) Act 1984.
- (9) In this section, a reference to heat network apparatus in a road includes a reference to heat network apparatus under, over, across, along or on the road.

### *Interpretation*

## **83 Interpretation of Part 6**

In this Part—

- “heat network apparatus” has the meaning given in section 69(11),
- “licence holder” has the meaning given in section 68(7),
- “necessary wayleave” has the meaning given in section 69(11),
- “network land right” has the meaning given in section 79(2),
- “network wayleave right” has the meaning given in section 69(1),

“wayleave document” has the meaning given in section 69(11).

## **PART 7**

### **KEY HEAT NETWORK ASSETS**

#### **84 Identifying key heat network assets**

- (1) This section applies to—
  - (a) a heat network consent application relating to—
    - (i) the construction and operation of a heat network, or
    - (ii) the operation of a heat network,
  - (b) a heat network consent modification application in respect of a heat network consent relating to—
    - (i) the construction and operation of a heat network, or
    - (ii) the operation of a heat network.
- (2) The heat network consent application or (as the case may be) the heat network consent modification application must include—
  - (a) required information about each key asset of the heat network to which the application relates, and
  - (b) required information about each person with an interest in such an asset.
- (3) In subsection (2), “required” means required by a determination under section 33(1).
- (4) In this Part, “key asset”, in relation to a heat network, means property of a type mentioned in subsection (5) which—
  - (a) forms part of the heat network, and
  - (b) is necessary to the operation of the heat network.
- (5) The types of property are—
  - (a) land,
  - (b) buildings,
  - (c) apparatus,
  - (d) such other type of property as may be specified by the Scottish Ministers by regulations.
- (6) For the purposes of subsection (4)(b), it is for the Scottish Ministers to determine any question which arises as to whether property forming part of a heat network is necessary to the operation of the heat network.
- (7) Regulations under subsection (5)(d) may make different provision for different areas.

#### **85 Preparing schedule of key heat network assets**

- (1) Following receipt of a heat network consent application of the type mentioned in section 84(1)(a) in relation to a heat network, the Scottish Ministers must prepare a schedule that includes details of each key asset of the heat network.

- (2) Subsection (3) applies where—
  - (a) property relating to a heat network appears to the Scottish Ministers to be a key asset of the heat network, and
  - (b) the Scottish Ministers propose to include details of the property in the schedule of key network assets for the heat network.
- (3) Before including details of the property in the schedule of key network assets, the Scottish Ministers must give notice of the proposal to—
  - (a) each person with an interest in the property, and
  - (b) such other persons as the Scottish Ministers consider appropriate.
- (4) The notice must—
  - (a) give reasons why the property appears to the Scottish Ministers to be a key asset of the heat network,
  - (b) explain the consequence of the property becoming a listed asset, and
  - (c) specify the period (which is to be not less than 28 days from the date on which the notice is given) within which the recipient of the notice may make representations about the proposal.
- (5) Where the Scottish Ministers include details of a key asset of a heat network in the schedule of key network assets for the heat network, the Scottish Ministers must give notice of that fact to each person with an interest in the key asset.
- (6) The Scottish Ministers must give notice under subsection (3) or (5) in such form and manner as they may specify by regulations.

## **86 Notifying Scottish Ministers of changes in key network assets**

- (1) The operator of a heat network must notify the Scottish Ministers if—
  - (a) property that is not a listed asset of the heat network becomes a key asset of the heat network, or
  - (b) property that is a listed asset of the heat network has ceased to be a key asset of the heat network.
- (2) Notification under subsection (1) must include such information about—
  - (a) property relating to the heat network to which the notification relates, and
  - (b) each person with an interest in such property,as the Scottish Ministers may determine.
- (3) The Scottish Ministers must arrange for any determination under subsection (2) to be published in such manner as they consider appropriate.

## **87 Modifying schedule of key heat network assets**

- (1) If the Scottish Ministers consider that property that is a listed asset of a heat network has ceased to be a key asset of the heat network, the Scottish Ministers must remove the details of the listed asset from the schedule of key heat network assets for the heat network.

- (2) If the Scottish Ministers consider that property that is not a listed asset of a heat network has become a key asset of the heat network, the Scottish Ministers must include details of the property in the schedule of key heat network assets for the heat network.
- (3) Before including details of property in the schedule of heat network assets pursuant to subsection (2), the Scottish Ministers must give notice of the proposal to—
  - (a) each person with an interest in the property, and
  - (b) such other persons as the Scottish Ministers consider appropriate.
- (4) The notice must—
  - (a) give reasons why the property appears to the Scottish Ministers to be a key asset of the heat network,
  - (b) explain the consequence of the property becoming a listed asset, and
  - (c) specify the period (which is to be not less than 28 days from the date on which the notice is given) within which the recipient of the notice may make representations about the proposal.
- (5) Where the Scottish Ministers include details of a key asset of a heat network in the schedule of key network assets for the heat network pursuant to subsection (2), the Scottish Ministers must give notice of that fact to each person with an interest in the key asset.
- (6) The Scottish Ministers must give notice under subsection (3) or (5) in such form and manner as they may specify by regulations.
- (7) It does not matter for the purposes of subsection (1) or (2) whether the Scottish Ministers form the view mentioned in either of those subsections—
  - (a) following receipt of a heat network consent modification application of the type mentioned in section 84(1)(b),
  - (b) following notification under section 86(1), or
  - (c) on their own initiative.

## **88 Preparation and maintenance of schedule of key network assets: further provision**

The Scottish Ministers may by regulations make further provision about the procedure to be followed in connection with the preparation and maintenance of schedules of key heat network assets.

## **89 Transfer schemes**

- (1) Where an operator (the “former operator”) ceases (or is to cease) operating a heat network, the Scottish Ministers may make a transfer scheme.
- (2) A “transfer scheme” is a scheme making provision for—
  - (a) the transfer to one or more relevant persons of the former operator’s rights relating to the use of listed assets of the heat network,
  - (b) the conferral on one or more relevant persons of other rights relating to the use of listed assets of the heat network.

- (3) A transfer scheme may make incidental, supplementary, consequential or transitional provision in connection with the transfer or conferral of rights by the transfer scheme as the Scottish Ministers consider appropriate.
- (4) The Scottish Ministers may by regulations make further provision about transfer schemes.
- (5) Regulations under subsection (4) may in particular make provision about—
  - (a) the rights that may be transferred or conferred by a transfer scheme,
  - (b) the procedure applying in connection with the making of a transfer scheme,
  - (c) the effect of transfers or conferrals of rights by a transfer scheme,
  - (d) requirements that may be imposed on the former operator or a transferee in connection with the transfer or conferral of rights by a transfer scheme, including obligations to enter into such agreements with another person, or to execute such documents in favour of another person, as may be specified or described in a transfer scheme,
  - (e) the circumstances in which a right transferred or conferred by a transfer scheme is or may be extinguished,
  - (f) the modification of a transfer scheme.
- (6) In this section—

“relevant person” means—

  - (a) the Scottish Ministers,
  - (b) the appropriate local authority,
  - (c) a person (other than the former operator) to whom a heat network consent relating to the operation of the heat network is granted,

“transferee” means a relevant person to whom rights are transferred, or on whom rights are conferred, by a transfer scheme.
- (7) In subsection (6), in the definition of “relevant person”, the “appropriate local authority” means—
  - (a) the local authority for the area in which the listed assets are situated, or
  - (b) where the listed assets are situated in the area of more than one local authority—
    - (i) the authority in whose area the greater or greatest part of the listed assets is situated, or
    - (ii) if neither or none of those authorities falls within sub-paragraph (i), such of those authorities as is selected by the Scottish Ministers for the purposes of being a transferee.

## **90 Compensation in connection with transfer schemes**

- (1) The Scottish Ministers may by regulations make provision for or about the payment of compensation in connection with a transfer scheme under section 89(1).
- (2) Regulations under subsection (1) may in particular make provision about—
  - (a) the circumstances in which compensation is payable,
  - (b) the persons to whom compensation is payable,

- (c) the persons liable to pay compensation,
- (d) what compensation is payable in respect of,
- (e) how the amount of compensation is to be calculated,
- (f) how a claim for compensation must be made in order to be valid (including the form and content of a claim, and the period within which it must be made),
- (g) the resolution of disputes relating to compensation.

## **91 Interpretation of Part 7**

In this Part—

“listed asset”, in relation to a heat network, means property the details of which are included in the schedule of key heat network assets for the heat network,

“operator”, in relation to a heat network, means a person holding a heat network consent in relation to the operation of the heat network,

“schedule of key heat network assets”, in relation to a heat network, means a schedule prepared under section 85(1) for the heat network.

## **PART 8**

### HEAT NETWORKS TARGETS AND DELIVERY PLANS

## **92 Heat network supply targets**

- (1) The Scottish Ministers must ensure that the combined supply of thermal energy by heat networks in Scotland reaches—
  - (a) 2.6 terawatt hours of output by 2027,
  - (b) 6 terawatt hours of output by 2030.
- (2) The Scottish Ministers may by regulations modify subsection (1) so as to—
  - (a) specify an additional target relating to the combined supply of thermal energy by heat networks in Scotland,
  - (b) modify any target for the time being specified there.
- (3) The Scottish Ministers may by regulations make provision about targets specified or modified under subsection (2).
- (4) Regulations under subsection (3) may in particular make provision about—
  - (a) the matters to be taken into account by the Scottish Ministers in specifying or modifying targets,
  - (b) the criteria to be applied in specifying or modifying targets,
  - (c) carrying out reviews of targets.
- (5) The Scottish Ministers may by regulations modify subsection (1) so as to specify an additional target relating to the output from the combined supply of thermal energy by heat networks in Scotland to be reached by 2035.
- (6) The Scottish Ministers must, by no later than 1 October 2023, lay a draft of a Scottish statutory instrument containing regulations under subsection (5) before the Scottish Parliament.

**93 Heat networks delivery plan**

- (1) The Scottish Ministers must prepare a heat networks delivery plan, setting out how the provisions of this Act, and any other supporting policies, will contribute to increasing the use of heat networks in Scotland.
- (2) A heat networks delivery plan must set out—
  - (a) the approach the Scottish Ministers intend to take to increase the use of heat networks in Scotland,
  - (b) how the Scottish Ministers propose to meet the targets specified in section 92(1),
  - (c) how the aggregate heat output of all heat networks in Scotland will be measured,
  - (d) how the deployment of heat networks in Scotland will contribute to meeting emissions reduction targets set in the Climate Change (Scotland) Act 2009.
- (3) In preparing the heat networks delivery plan the Scottish Ministers must consult such persons as they consider appropriate.
- (4) The Scottish Ministers must—
  - (a) publish the heat networks delivery plan, and
  - (b) lay a copy of it before the Scottish Parliament,no later than 1 April 2022.
- (5) The Scottish Ministers are to keep the heat networks delivery plan under review and may revise it at any time.
- (6) At the end of each of the reporting periods the Scottish Ministers must—
  - (a) review the heat networks delivery plan,
  - (b) lay a report before the Scottish Parliament on that review.
- (7) A report under subsection (6) must consider—
  - (a) how this Act and associated policies have contributed to an increase in the use of heat networks in Scotland in the reporting period,
  - (b) what progress has been made in the aggregate heat output of all heat networks in Scotland in the reporting period and, in particular, in meeting the targets specified in section 92(1),
  - (c) how the deployment of heat networks in Scotland has contributed to meeting emissions reduction targets set in the Climate Change (Scotland) Act 2009 during the reporting period.
- (8) The reporting periods are—
  - (a) the period of 2 years beginning with the day on which the first heat networks delivery plan is published under subsection (4),
  - (b) each subsequent period of 2 years.
- (9) The Scottish Ministers must have regard to the just transition principles (within the meaning of section 35C of the Climate Change (Scotland) Act 2009)—
  - (a) in preparing the heat networks delivery plan,
  - (b) in reviewing, and making any revision of, the plan under subsection (5),
  - (c) in reviewing the plan under subsection (6), and

- (d) in preparing a report under subsection (6) on each such review.

## PART 9

### MISCELLANEOUS AND GENERAL

#### *Fees*

#### **94 Fees for applications etc.**

- (1) The Scottish Ministers may by regulations make provision for the payment of a charge or fee, in respect of the matters mentioned in subsection (2), to the following persons—
  - (a) the licensing authority,
  - (b) the Scottish Ministers,
  - (c) a local authority,
  - (d) a person designated by the Scottish Ministers under section 37(b),
  - (e) the permit authority.
- (2) The matters are—
  - (a) in relation to the licensing authority—
    - (i) the performance by the licensing authority of any of the licensing authority's functions under this Act,
    - (ii) anything done by the licensing authority that is calculated to facilitate, or is conducive or incidental to, the performance of any such function,
  - (b) in relation to the Scottish Ministers—
    - (i) the performance by the Scottish Ministers of any of the their functions under Part 2,
    - (ii) anything done by them that is calculated to facilitate, or is conducive or incidental to, the performance of any such function,
  - (c) in relation to a local authority—
    - (i) the performance by a local authority of any if its functions under Part 2 as the appropriate consent authority,
    - (ii) anything done by the local authority that is calculated to facilitate, or is conducive or incidental to, the performance of any such function,
  - (d) in relation to a person designated by the Scottish Ministers under section 37(b)—
    - (i) the performance by that person of any of the person's functions as the enforcement authority for the purposes of Part 2,
    - (ii) anything done by that person that is calculated to facilitate, or is conducive or incidental to, the performance of any such function,
  - (e) in relation to the permit authority—
    - (i) the performance by the permit authority of any of the permit authority's functions under Part 4,
    - (ii) anything done by the permit authority that is calculated to facilitate, or is conducive or incidental to, the performance of any such function.

- (3) Regulations under subsection (1) may in particular—
  - (a) specify the person by whom the charge or fee is to be paid,
  - (b) specify charges or fees or provide for charges or fees to be determined by reference to such factors as may be specified in or determined under the regulations,
  - (c) provide for the remission or repayment of fees in such circumstances as may be specified in or determined under the regulations.
- (4) Where regulations under subsection (1) provide for a fee to be charged in respect of any application under this Act made to a person mentioned in paragraph (a), (b), (c) or (e) of that subsection, the person need not consider the application unless and until the fee is paid.

*Local authority costs*

**95 Strategy: local authority costs**

- (1) The Scottish Ministers must prepare a strategy setting out the costs to local authorities in relation to their duties under this Act.
- (2) The strategy prepared under subsection (1)—
  - (a) must set out the costs associated with the duties of local authorities under this Act,
  - (b) must set out the approach the Scottish Ministers intend to take to fund local authorities to fulfil their duties under this Act,
  - (c) must set out the approach the Scottish Ministers intend to take to ensure local authorities have the capacity to fulfil their duties under this Act,
  - (d) may include such other information as the Scottish Ministers consider appropriate.

*General*

**96 Individual culpability where organisation commits offence**

- (1) This section applies where—
  - (a) an offence under this Act is committed by a relevant organisation, and
  - (b) the commission of the offence—
    - (i) involves consent or connivance on the part of a responsible individual, or
    - (ii) is attributable to neglect on the part of a responsible individual.
- (2) The responsible individual (as well as the relevant organisation) commits the offence.
- (3) For the purposes of this section—
  - (a) “relevant organisation” means an organisation listed in the first column of the table in subsection (4),
  - (b) “responsible individual” means, in relation to a relevant organisation—
    - (i) an individual falling within the corresponding entry in the second column of the table in subsection (4), or
    - (ii) an individual purporting to act in the capacity of an individual falling within the corresponding entry.

(4) The table is as follows—

| <i>Organisation</i>   | <i>Individual</i>   |
|---|---|
| company as mentioned in section 1 of the Companies Act 2006 | director, manager, secretary or other similar officer                   |
|   | member, where the company's affairs are managed by its members          |
| limited liability partnership                               | member  |
| other partnership   | partner   |
| any other body or association                               | individual who is concerned in the management or control of its affairs |

**97 Crown application: general**

- (1) Nothing in this Act makes the Crown criminally liable.
- (2) But the Court of Session may, on an application by the Lord Advocate, declare unlawful any act or omission for which the Crown would be criminally liable were it not for subsection (1).
- (3) Subsection (1) does not affect the criminal liability of persons in the service of the Crown.
- (4) Section 98 makes provision about access to Crown land.

**98 Crown application: powers of entry**

- (1) A power of entry conferred by section 43(2), 78(5) or 79(7) is exercisable in relation to Crown land specified in column 1 of the following table only with the consent of the person specified in the corresponding entry in column 2 of the table (the “appropriate authority”).

| <i>Crown land</i>  | <i>Appropriate authority</i>   |
|--|--------------------------------|
| Land an interest in which belongs to Her Majesty in right of the Crown and which forms part of the Crown Estate (that is, the property, rights and interests under the management of the Crown Estate Commissioners) | The Crown Estate Commissioners |
| Land an interest in which belongs to Her Majesty in right of the Crown and which forms part of the Scottish Crown Estate   | The person managing the land   |

| <i>Crown land</i>   | <i>Appropriate authority</i>  |
|---|---|
| Land an interest in which belongs to Her Majesty in right of the Crown other than land forming part of the Crown Estate or the Scottish Crown Estate          | The office-holder in the Scottish Administration or the Government department managing the land                                       |
| Land an interest in which belongs to Her Majesty in right of Her private estates  | The person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Scottish Ministers |
| Land an interest in which belongs to an office-holder in the Scottish Administration  | The office-holder in the Scottish Administration  |
| Land an interest in which belongs to a Government department  | The Government department   |
| Land an interest in which is held in trust for Her Majesty by an office-holder in the Scottish Administration for the purposes of the Scottish Administration | The office-holder in the Scottish Administration  |
| Land an interest in which is held in trust for Her Majesty for the purposes of a Government department  | The Government department   |

- (2) In subsection (1)—
- (a) the reference to Her Majesty’s private estates is to be construed in accordance with section 1 of the Crown Private Estates Act 1862,
  - (b) “Government department” means a department of the Government of the United Kingdom,
  - (c) “Scottish Crown Estate” means the property, rights and interests to which section 90B(5) of the Scotland Act 1998 applies.
- (3) It is for the Scottish Ministers to determine any question that arises as to who in accordance with subsection (1) is the appropriate authority in relation to any land, and their decision is final.

## 99 Regulations

- (1) Any power of the Scottish Ministers to make regulations under this Act includes power to make—
  - (a) incidental, supplementary, consequential, transitional, transitory or saving provision,
  - (b) different provision for different purposes.
- (2) Regulations under any of the following sections are subject to the affirmative procedure: 1(7), 4(b), 32(1), 37(b), 55(b), 57(1), 61(1), 73(4), 77(5), 81(4), 89(4), 90(1) and 92(2) or (5).

- (3) Regulations under the following sections which add to, replace or omit any part of the text of an Act are subject to the affirmative procedure: 12(1), 20(1), 28(3), 29(6), 31(4), 36(1), 41(1), 60(1), 75(1) and 100(1).
- (4) All other regulations under this Act are subject to the negative procedure.
- (5) Subsection (1)(a) does not apply to regulations under section 100(1).
- (6) This section does not apply to regulations under section 102(2).

#### **100 Ancillary provision**

- (1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to this Act or any provision made under it.
- (2) Regulations under subsection (1) may modify any enactment (including this Act).
- (3) Regulations under subsection (1)—
  - (a) which add to, replace or omit the text of an Act are subject to the affirmative procedure,
  - (b) otherwise, are subject to the negative procedure.

#### **101 General interpretation**

- (1) In this Act—
  - “appropriate consent authority” is to be construed in accordance with section 21,
  - “enforcement authority” has the meaning given in section 37,
  - “the fuel poverty targets” means the targets set out in sections 1 and 2 of the Fuel Poverty (Targets, Definition and Strategy) (Scotland) Act 2019,
  - “heat network” has the meaning given in section 1(1),
  - “heat network consent” has the meaning given in section 18(3),
  - “heat network consent application” has the meaning given in section 22(2),
  - “heat network consent modification application” has the meaning given in section 26(3),
  - “heat networks licence” has the meaning given in section 2(5),
  - “heat network zone” has the meaning given in section 46(3),
  - “licensing authority” has the meaning given in section 4,
  - “permit authority” has the meaning given in section 55,
  - “the Scottish Fuel Poverty Advisory Panel” means the panel established under section 14(1) of the Fuel Poverty (Targets, Definition and Strategy) (Scotland) Act 2019,
  - “thermal energy” has the meaning given in section 1(5).
- (2) References in this Act to the construction of a heat network are to be construed in accordance with section 18(2).

- (3) In this Act, references to a person holding a heat network consent are references to the person for the time being entitled to the benefit of the heat network consent whether as a result of—
- (a) the grant of the consent to the person—
    - (i) under section 23(1)(a), or
    - (ii) pursuant to an appeal under section 31(2), or
  - (b) a transfer of the consent to the person under section 25(1).

## **102 Commencement**

- (1) This section and sections 97 to 101 and 103 come into force on the day after Royal Assent.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.
- (3) Regulations under subsection (2) may—
  - (a) include transitional, transitory or saving provision,
  - (b) make different provision for different purposes.

## **103 Short title**

The short title of this Act is the Heat Networks (Scotland) Act 2021.

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